

**United States Bankruptcy Court  
Central District of California  
Los Angeles  
Judge Ernest Robles, Presiding  
Courtroom 1568 Calendar**

**Wednesday, September 1, 2021**

**Hearing Room 1568**

10:00 AM

**2:11-58228 Robert W. Hunt, a medical corporation**

**Chapter 7**

**#1.00** Hearing  
RE: [770] Motion RE: Objection to Claim Number 9 by Claimant Robert and Peli Hunt Revocable Trust. Motion to Disallow Proof of Claim No. 9; Memorandum of Points and Authorities; and Declaration of David M. Goodrich in Support (with Proof of Service) (Gaschen, Beth)

Docket 770

**\*\*\* VACATED \*\*\* REASON: PER ORDER ENTERED 8-27-21**

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
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**Debtor(s):**

Robert W. Hunt, a medical

Represented By  
Steven E. Wohn  
Franklin P Jeffries - SUSPENDED -  
Franklin P Jeffries - SUSPENDED -  
Douglas A. Crowder

**Trustee(s):**

David M Goodrich (TR)

Represented By  
David Gould  
Reem J Bello  
Beth Gaschen

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**2:19-20564 Gregory Tardaguila**

**Chapter 7**

**#2.00** HearingRE: [62] Motion to Approve Compromise Under Rule 9019 - Trustee's Notice of Motion and Motion to Approve Compromise with Ann Tardaguila individually and as Trustee of The Tardaguila Living Trust 07-16-1999; Memorandum of Points and Authorities, Declaration of Brad D. Krasnoff and Request for Judicial Notice in Support Thereof; proof of service (Israel, Eric)

Docket 62

**Tentative Ruling:**

8/31/2021

**Note: Parties may appear at the hearing either in-person or by telephone. Parties electing to appear in-person shall comply with all requirements regarding social distancing, use of face masks, etc. which may be in effect at the time of the hearing. Parties electing to appear by telephone should contact CourtCall at 888-882-6878 no later than one hour before the hearing.**

For the reasons set forth below, the Motion is GRANTED, and the Settlement Agreement is APPROVED.

**Pleadings Filed and Reviewed**

1. Order (1) Designating The First And Second Counterclaims As Affirmative Defenses To Be Litigated In Connection With The Complaint, (2) Granting The Motion To Dismiss As To The First And Second Counterclaims, And Dismissing Such Counterclaims Without Leave To Amend, Based Upon Such Designation, (3) Finding That The Third And Fourth Counterclaims Are Property Of The Bankruptcy Estate That Can Be Prosecuted Only By The Chapter 7 Trustee, (4) Fixing March 13, 2020, As The Deadline For The Chapter 7 Trustee To Determine Whether To Prosecute The Third And Fourth Counterclaims, And (5) Granting The Motion To Dismiss As To The Third And Fourth Counterclaims And Dismissing Such Counterclaims With Leave To Amend [Case No. 2:19-ap-1503 Doc. No. 31]

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**Gregory Tardaguila**

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2. Order Approving Stipulation For Order Extending Trustee's Deadlines Re Prosecution Of Fraud Counterclaims And Continuing Status Conference From April 6, 2021 At 10:00 A.M. To June 15, 2021 At 10:00 A.M.(BNC-PDF) [Case No. 2:19-ap-1503 Doc. No. 76]
3. Motion to Approve Compromise Under Rule 9019 [Doc. No. 62]
4. Trustee's Notice of Motion to Approve Compromise with Ann Tardaguila individually and as Trustee of The Tardaguila Living Trust 07-16-1999 [Doc. No. 63]
5. First Supplement to Trustee's Motion to Approve Compromise with Ann Tardaguila Individually and as Trustee of The Tardaguila Living Trust 07-16-1999 [Doc. No. 65]
6. As of the date of this tentative ruling, no opposition is on file

## **I. Facts and Summary of Pleadings**

On September 6, 2019 (the "Petition Date"), Gregory Tardaguila (the "Debtor") filed a voluntary petition for relief under Chapter 7 of title 11 of the United States Code thereby commencing bankruptcy case no. 2:19-bk-20564-ER. Brad D. Krasnoff thereafter accepted appointment as the Chapter 7 trustee (the "Trustee") for the estate and continues to serve in that capacity for the benefit of the estate and its creditors.

Prior to the Petition Date, on or about April 10, 2018, Ann Tardaguila, as Trustee of The Tardaguila Living Trust dated 07-16-1999 ("the Tardaguila Trust"), the Debtor's mother, commenced a civil proceeding against the Debtor, among others, in Los Angeles Superior Court, titled *Ann Tardaguila etc., et al. v. Gregory Tardaguila, et al.*, Case No. YC072803 (the "Subject Lawsuit"). On or about June 25, 2018, the Debtor filed a cross-complaint in the Subject Lawsuit (the "Cross-Claims"). The Cross-complaint was not included in Debtor's original Schedule A/B (docket no. 1) On the Petition Date, the Debtor filed his Statement of Financial Affairs, which disclosed the Subject Lawsuit as pending. On or about April 2, 2020, the Debtor filed his first Schedule E/F (docket no. 1), in which he listed Ann Tardaguila as an unsecured creditor for \$900,000.

On or about April 2, 2020, the Debtor filed his Second Amended Schedule A/B, which included as an asset "Claims against Ann Tardaguila" with a combined value of \$4,275,000, together with other assets described as "AGI/ZHRO (bad

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investment)" and "Claim against DiDomenico Antonio and Syncare Wellness Center Inc (civil and criminal restitution)" (docket no. 40). The Debtor claimed an exemption in the Cross-Claims pursuant to C.C.P. § 703.140(b)(5) for \$2,576.43 in his Second Amended Schedule C, also filed on or about April 2, 2020 (docket no. 40).

On or about April 2, 2020, the Debtor filed his Second Amended Schedule E/F (docket no. 40), in which he listed Ann Tardaguila as an unsecured creditor for \$900,000. On or about April 22, 2020, the Debtor filed his Third Amended Schedule A/B, which included as an asset "Claims against Ann Tardaguila" with a value of \$1,200,000 (docket no. 42). The Debtor claimed an exemption in the Cross-Claims pursuant to C.C.P. § 703.140(b)(11)(D) and C.C.P. § 703.140(b)(11)(E) for \$29,275.00 in his Third Amended Schedule C filed on or about April 22, 2020 (docket no. 42). On or about May 22, 2020, the Debtor filed his Fourth Amended Schedule C, which no longer lists an exemption in the Cross-Claims (docket no. 43).

On or about December 8, 2019, Ann, as trustee of the Tardaguila Trust, filed a complaint against the Debtor alleging claims under section 523 of the Bankruptcy Code, which was assigned adversary no. 2:19-ap-01503-ER (the "Adversary Proceeding"). On or about January 4, 2020, the Debtor responded to that complaint and raised the Cross-Claims. The Debtor asserted the claims as Cross-Claims in the state court action and presented the claims as counter claims in this court. On February 19, 2020, the Court dismissed the Cross-Claims and gave the Trustee time to decide whether to seek to amend and prosecute the Cross-Claims. The Parties acknowledge that the Cross-Complaint and the Counter-Claims are property of the Debtor's bankruptcy estate. In light of the effects of the COVID-19 pandemic on the economy and in particular upon Ann, the parties entered into a series of stipulations and the Court extended that deadline to June 25, 2021.

**The Motion**

On July 7, 2021, the Trustee filed the Motion [Doc. No. 62]. The Trustee seeks approval of a negotiated settlement agreement (the "Settlement Agreement") between the Trustee and Ann Tardaguila individually, and as trustee of the Tardaguila Living Trust dated 07-16-1999 (the "Settling Party"). The Proposed settlement includes:

1. The Settling Party will pay the Trustee the principal sum of \$30,000 (the "Compromise Sum") upon execution of the Agreement, which funds are to be held in trust by the Settling Party's counsel pending entry of the Court's order approving the Agreement.

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2. The parties trade releases of claims relating to the Subject Lawsuit and Cross-Claims.
3. Ann Tardaguila's proof of claim arising from the Adversary Proceeding will be allowed as a general, unsecured claim against the Debtor's estate in the sum of \$975,112. If this proof of claim is amended, the Trustee reserves the right to object to the claim beyond the \$975,112 amount.

## **II. Findings of Fact and Conclusions of Law**

Bankruptcy Rule 9019(a) permits the Court to approve a compromise or settlement. In the Ninth Circuit, courts consider the following factors in determining the fairness, reasonableness and adequacy of a proposed settlement agreement:

- (a) The probability of success in the litigation;
- (b) the difficulties, if any, to be encountered in the matter of collection;
- (c) the complexity of the litigation involved, and the expense, inconvenience and delay necessarily attending it;
- (d) the paramount interest of the creditors and a proper deference to their reasonable views in the premises.

*Martin v. Kane (In re A&C Properties)*, 784 F.2d 1377, 1381 (9th Cir. 1986).

"Each factor need not be treated in a vacuum; rather, the factors should be considered as a whole to determine whether the settlement compares favorably with the expected rewards of litigation." *In re Western Funding Inc.*, 550 B.R. 841, 851 (B.A.P. 9th Cir. 2016). Furthermore, "compromises are favored in bankruptcy, and the decision of the bankruptcy judge to approve or disapprove the compromise of the parties rests in the sound discretion of the bankruptcy judge." *In re Sassalos*, 160 B.R. 646, 653 (Bankr. D. Ore. 1993). In approving a settlement agreement, the Court must "canvass the issues and see whether the settlement 'falls below the lowest point in the range of reasonableness.'" *Cosoff v. Rodman (In re W.T. Grant Co.)*, 699 F.2d 599, 608 (2d Cir. 1983).

The Court finds that the Settlement Agreement is adequate, fair and reasonable, and in the best interest of the estate in accordance with the *A & C Properties* factors.

1. Likelihood of Success in Litigation

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The Court finds that absent the proposed Agreement, the Trustee would have to substitute into the Subject Lawsuit and would be forced to litigate or abandon the claims asserted therein. The Trustee asserts that prevailing in the Subject Lawsuit would be difficult. On February 19, 2020, this Court issued a tentative ruling on the Debtor's ability to pursue the Cross-Claims (the "Tentative Ruling"). In the Tentative Ruling, the Court found that the Cross-Claims were not pleaded with sufficient detail to enable the Court to determine whether the Cross-Claims are barred by the applicable statute of limitations. In particular, the Debtor claims that alleged misrepresentations occurred in 2015 – over 6 years ago. The claims for relief asserted in the Cross-Claims include actual fraud with a 3 year statute of limitations and negligent misrepresentations with a 3 year statute of limitations.

As the Cross-Claims originally belonged to the Debtor before the Trustee was appointed, the Trustee has insufficient knowledge of the particular circumstances giving rise to the Cross-Claims, and thus cannot accurately gauge their strength. The Trustee does note that the Debtor originally did not even bother to schedule the Cross-Claims as assets. Moreover, the Trustee notes that Ann has filed a substantial claim against the estate, and that she appears to be the largest creditor of the estate at over \$900,000. Even if the Trustee were successful on the claims pleaded in the Cross-Claims, Ann may well have a setoff claim for the \$900,000. As the largest creditor, she also is likely entitled to the bulk of any distributions in this case. Additionally, there is always a risk of loss if the case proceeds to trial, and funds in the estate are minimal. Therefore, the outcome is uncertain and the Court finds that accepting \$30,000 now, without further expense or risk, is appropriate.

**2. Difficulties in Collection**

The Trustee represents that Ann's husband has cancer and that they have had difficulty even raising \$30,000 to fund the settlement. Absent a negotiated compromise, the Court finds that due to the financial and life difficulties of the Settling Parties they are unlikely to raise the collection amount that may be ordered after litigation. Therefore, in consideration of collection difficulties, this factor supports approval of the Settlement Agreement.

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3. Complexity, Expense, Inconvenience and Delay of Litigation

The Trustee asserts that if he were to substitute into the Subject Lawsuit to pursue the Cross-Claims, it would not be overly complex, although searching for and employing special litigation counsel, and any litigation, including potential appeals, could be lengthy. However, the Debtor and the Settling Party both have diametrically different versions of the facts, and again, the Trustee as a third-party fiduciary would have to immerse himself into that dispute. The Agreement allows for the Trustee to receive \$30,000 immediately, without the expense of trial or the risk of adverse rulings, and without further delay. The Court believes that employing special litigation counsel and trying the claims likely would not result in a better net outcome for the estate than the terms of the Agreement, especially considering that the Settling Party is the largest creditor and beneficiary of the bulk of any distribution that may be made in this case.

4. Interests of Creditors

The Court finds that the Agreement reached by the Trustee and the Settling Parties serves the paramount interest of creditors. It will result in \$30,000 in funds coming into the estate, without the expense, risk of loss and delay inherent in any litigation.

In sum, the Court determines that the Trustee satisfied all of the *A & C Properties* factors, and therefore, the Settlement Agreement is approved.

Moreover, the Court has not received any objection to the Motion. Accordingly, pursuant to LBR 9013-1(h), the Court presumes all interested parties consent to the approval of the Settlement Agreement.

**III. Conclusion**

Based on the foregoing, the Motion is GRANTED, and the Settlement Agreement is APPROVED.

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The Trustee is directed to lodge a conforming proposed order, incorporating this tentative ruling by reference, within seven days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Landon Foody at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

<b>Party Information</b>
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**Debtor(s):**

Gregory Tardaguila

Represented By  
Kevin Tang  
Andrew P Altholz

**Trustee(s):**

Brad D Krasnoff (TR)

Represented By  
Eric P Israel  
Sonia Singh



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**2:21-13159 Jose Ramirez and Maria Ramirez**

**Chapter 7**

**#3.00** HearingRE: [20] Motion For Sale of Property of the Estate under Section 363(b) - No Fee Notice of Motion and Motion to Approve Assignment Agreement between the Trustee and Debtors for the Trustee's Conveyance of the Estate's Interest in (A) 2007 Nissan Versa and (B) 2010 Ford F150; Memorandum of Points and Authorities; Declaration of Peter J. Mastan; and Exhibits with Proof of Service (Mastan (TR), Peter)

Docket 20

**Tentative Ruling:**

8/31/2021

**Note: Parties may appear at the hearing either in-person or by telephone. Parties electing to appear in-person shall comply with all requirements regarding social distancing, use of face masks, etc. which may be in effect at the time of the hearing. Parties electing to appear by telephone should contact CourtCall at 888-882-6878 no later than one hour before the hearing.**

For the reasons set forth below, the Sale Motion is GRANTED. Should any overbidders present themselves at the hearing, the Court will conduct the sale auction in accordance with the procedures set forth below.

**Key Sale Terms:**

- 1) Proposed purchaser: Jose Ramirez and Maria Ramirez.
- 2) Property for sale: 2007 Nissan Versa and 2010 Ford F150, together.
- 3) Purchase price: \$8,325 (\$5,000.00 cash and \$3,325.00 in exemptions)
- 4) Overbids: the minimum overbid amount shall be \$1,000 greater than the amount paid by Debtor under this agreement (at least \$9,325), subsequent overbids shall be in increments of \$500.00.

**Pleadings Filed and Reviewed:**

- 1) Notice of Motion and Motion to Approve Assignment Agreement between the Trustee and Debtors for the Trustee's Conveyance of the Estate's Interest in (a) 2007 Nissan Versa and (B) 2010 Ford F150; Memorandum of Points and Authorities; Declaration of Peter J. Mastan; and Exhibits (the "Motion") [Doc.

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**Jose Ramirez and Maria Ramirez**  
No. 20]

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- 2) Notice of Hearing on Motion to Approve Assignment Agreement between the Trustee and Debtors for the Trustee's Conveyance of the Estate's Interest in (A) 2007 Nissan Versa and (B) 2010 Ford F150 with Proof of Service [Doc. No. 21]
- 3) Notice of sale of estate property (LBR 6004-2) 2007 Nissan Versa and 2010 Ford F150 [Doc. No. 22]
- 4) As of the date of this tentative ruling, no opposition is on file.

**I. Facts and Summary of Pleadings**

**A. Background**

On April 16, 2021, Jose Ramirez and Maria Ramirez (the "Debtors") filed a voluntary petition for relief under Chapter 7 of the Bankruptcy Code and related schedules in the United States Bankruptcy Court for the Central District of California. Shortly thereafter, the Trustee Peter J. Mastan (the "Trustee") was appointed to administer the Estate. Debtors' Schedule A/B identifies the Nissan with a stated value of approximately \$800.

Debtors' Schedule C reflects no claimed exemption in the 2007 Nissan Versa (the "Nissan"), and Schedule D reflects no lien against the Nissan. At the Trustee's request, Debtors obtained a Carmax appraisal valuation, which offered to buy the Nissan for \$1,200. Debtors' Schedule A/B identifies the 2010 Ford F150 (the "Ford") with a stated value of approximately \$3,000. Debtors' Schedule C reflects a claimed exemption in the Ford of \$3,525, while Schedule D reflects no lien against the Ford. At the Trustee's request, Debtors obtained a Carmax appraisal valuation, which offered to buy the Ford for \$8,000 (Nissan and Ford collectively the "Vehicles").

The Trustee negotiated with the Debtors, through their counsel, for their acquisition of the Estate's right, title, and interest in the Vehicles for \$8,325 (consisting of \$5,000 cash to the Estate and the satisfaction of the Debtors' \$3,325 exemption in the Ford), subject to Bankruptcy Court approval and overbid (the "Agreement").

**B. The Proposed Assignment**

Debtors agrees to pay a total of \$5,000.00 in addition to Debtor's claimed

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exemptions in the Ford (the "Assignment Price") for the Estate's interest in the Vehicles. Debtors and Trustee acknowledge that Debtors have already delivered the Assignment Price to the Trustee, and that those funds are being held in a segregated, non-interest bearing account.

Within 10 business days after entry of the Approved order and any stay of that Approval Order having terminated, the Trustee agrees to sign such documents as are reasonably necessary to assign the Estate's Interest in the Vehicles to the Debtors. To the extent that there are one or more liens against the vehicles, Debtors represent and warrant that the payments on those secured obligation(s) are current and that Debtors will continue to timely make all payments on such secured obligations.

In the event of any default by Debtors under this Agreement, the Trustee shall be entitled to obtain (and Debtors agree that the Trustee may obtain) on *ex parte* motion an order requiring Debtors to turn over the Vehicles to the Trustee for sale by the Trustee, and the Trustee shall be entitled to retain for the benefit of the Estate all proceeds of that sale (as well as all amounts previously paid by Debtors to the Estate) to the exclusion of the Debtors.

Debtors irrevocably waive any right that Debtors may otherwise have to further amend their claimed exemptions in the Vehicles and, once the Assignment Price becomes property of the Estate, Debtors shall have no right, title, or interest in or to the Assignment Price or its proceeds. Unless there is a successful overbid such that Debtors are not the ultimate purchaser of the Vehicles, upon entry of the Approved Order, the Debtors' claimed exemption in the Vehicles shall be deemed satisfied in full.

**C. Overbid Procedures**

The Trustee's assignment of the Estate's Interest in the Vehicles to Debtors is subject to overbid. While the parties acknowledge that the Bankruptcy Court is free to accept, modify, or disregard the overbid procedure proposed by the parties, the parties agree to request that the following terms govern the overbid process:

1. Any initial overbid for an assignment of the Estate's Interest in the Vehicles must be in an amount at least \$1,000.00 greater than the amount to be paid by Debtors under this Agreement (i.e., the initial overbid must be in an amount not less than \$6,000.00 plus the amount of Debtor's exemption in the Ford for a total of \$9,325);
2. In the event that the Trustee receives multiple overbids, any subsequent overbids must be made in the Bankruptcy Court at the time of the hearing

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**Jose Ramirez and Maria Ramirez**

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- on this Motion and must be made in minimum increments of \$500;
3. Any overbid must be accompanied by a certified or cashier's check in the full amount of that bid and the successful overbidder must pay to the Trustee by certified or cashier's check the full price of that assignment at the time of the hearing on the Motion;
  4. Any sale at overbid will be all cash, "AS IS", "WHERE IS", subject to all claims, lines, encumbrances, and other interests, with all faults and without any representation or warranty whatsoever, whether express or implied, including without limitation, without warranty as to functionality, merchantability, or fitness for a particular purpose.
  5. The Trustee may exercise his discretion to reject a particular overbid that is not both higher and better (based on all of the circumstances) than Debtor's offer or the offer of other overbidders.

## **II. Findings and Conclusions**

### **A. The Proposed Sale is Approved**

Section 363(b) permits the Trustee to sell estate property out of the ordinary course of business, subject to court approval. The Trustee must articulate a business justification for the sale. *In re Walter*, 83 B.R. 14, 19-20 (9th Cir. BAP 1988). Whether the articulated business justification is sufficient "depends on the case," in view of "all salient factors pertaining to the proceeding." *Id.* at 19-20.

The Trustee has demonstrated sufficient business justification for the sale. The sale is consistent with the Trustee's obligation to liquidate the Debtor's estate for the benefit of creditors. The sale price of \$8,325 includes \$5,000 cash in addition to the satisfaction of the Debtors' \$3,325 exemption in the Vehicles, a price that the Trustee believes maximizes the Estate's value in the Vehicles. Additionally, with the proposed costs of sale on the public market and other expenses to administer the Vehicles, the Trustee believes this Assignment is in the best interest of the Estate. Section 363(f) provides that estate property may be sold free and clear of liens, claims, and interests, providing one of the following conditions is satisfied:

- 1) Applicable nonbankruptcy law permits sale of such property free and clear of such interest;
- 2) Such entity consents;
- 3) Such interest is a lien and the price at which such property is sold is greater

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- than the aggregate value of all liens on such property;
- 4) Such interest is in bona fide dispute; or
  - 5) Such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.

Section 363(f) was drafted in the disjunctive; therefore, the Trustee needs to satisfy only one of the five subsections of § 363(f) in order for the sale to be free and clear of all interests. *See e.g., Citicorp Homeowners Services, Inc. v. Elliot (In re Elliot)*, 94 B.R. 343, 345 (Bankr. E.D. Pa. 1988). The Court approves the Trustee's proposed Assignment of the Vehicles and finds that the Property may be sold free and clear of such liens and encumbrances. Pursuant to § 363(f)(2), both the Trustee and Debtors consent to the Assignment.

**B. Good Faith Purchaser**

Section 363(m) protects the rights of good faith purchasers in a § 363(b) sale, mandating that "reversal or modification on appeal of an authorization under subsection (b) or (c) of this section of a sale or lease of property does not affect the validity of a sale under such authorization to an entity that purchased or leased such property in good faith . . . ." *See In re Ewell*, 958 F.2d 276, 279 (9th Cir. 1992). Courts traditionally define a "good faith purchaser" as one who buys the property in "good faith" and for "value." *In re Kings Inn, Ltd.*, 37 B.R. 239, 243 (9th Cir. BAP 1984). Lack of good faith can be found through "fraud, collusion between the purchaser and other bidders or the trustee, or an attempt to take grossly unfair advantage of other bidders." *In re Ewell*, 958 F.2d at 281; *In re Suchy*, 786 F.2d 900, 902 (9th Cir. 1985). Having reviewed the declaration of the Trustee, the Court finds that the Trustee is wholly unrelated to the Debtors and all discussions and negotiations were conducted at arms-length, in good faith, and without collusion. Declaration of Peter J. Mastan, Doc. No. 20. The Court finds that the Debtors are good faith purchasers entitled to the protections of § 363(m). If an overbidder prevails at the sale hearing, the Court will take testimony from such overbidder to determine whether § 363(m) protections are warranted.

**III. Conclusion**

Based upon the foregoing, the Sale Motion is GRANTED in its entirety. Since the 363(f)(2) aspect of the Motion has not been controverted, the Trustee's request for a waiver of the 14-day stay imposed by Bankruptcy Rule 6004(h) is GRANTED, as

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this would facilitate the conclusion of this case within the timeframe contemplated by the Court.

The Debtor is directed to lodge a proposed order, incorporating this tentative ruling, within 7 days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Landon Foody at 213-894-1522. If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so. Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

<b>Party Information</b>
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**Debtor(s):**

Jose Ramirez

Represented By  
Kian Mottahedeh

**Joint Debtor(s):**

Maria Ramirez

Represented By  
Kian Mottahedeh

**Trustee(s):**

Peter J Mastan (TR)

Pro Se

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**2:18-20151 Verity Health System of California, Inc.**

**Chapter 11**

**#4.00 Hearing**

RE: [6610] Amended Application (related document(s): 4671 Application for Allowance of DaVita Inc.'s Administrative Expense Claim for Post-Petition Services Provided to St. Vincent Medical Center filed by Creditor DaVita Inc., 5227 Motion to Allow Claim / Administrative Expense Claim for Post-Petition Services Provided to St. Francis Medical Center filed by Creditor DaVita Inc., 6475 Motion Notice of Motion and Motion to Authorize Liquidating Trustee to Undertake Final Distribution Program for Administrative Claims; Declaration of Peter Chadwick in Support Thereof filed by Trustee Howard Grobstein Liquidating Trustee (Verity)) (Winsten, Michael)

Docket 6610

**\*\*\* VACATED \*\*\* REASON: PER ORDER ENTERED 8-26-21**

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
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**Debtor(s):**

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

Nicholas A Koffroth

Kerry L Duffy

Brigette G McGrath

Gary D Underdahl

Nicholas C Brown

Anna Kordas

Mary H Haas

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**CONT... Verity Health System of California, Inc.**

**Chapter 11**

Robert E Richards  
Lawrence B Gill  
Richard Reding

**Trustee(s):**

Howard Grobstein Liquidating

Represented By  
James Cornell Behrens



**United States Bankruptcy Court  
Central District of California  
Los Angeles  
Judge Ernest Robles, Presiding  
Courtroom 1568 Calendar**

**Wednesday, September 1, 2021**

**Hearing Room 1568**

10:00 AM

**2:18-20151 Verity Health System of California, Inc.**

**Chapter 11**

**#5.00 Hearing**

RE: [6593] Motion Of Life Insurance Company Of North America For Immediate Payment Of Section 507(A)(5) Priority Claims Against Debtors: Seton Medical Center, Case No. 18-20167 St. Vincent Medical Center, Case No. 18-20164 St. Francis Medical Center, Case No. 18-20165 Verity Business Services, Case No. 18-20173 Verity Health System Of California, Inc., Case No. 20151 Verity Medical Foundation, Case No. 18-20169

Docket 6593

**\*\*\* VACATED \*\*\* REASON: CONTINUED 9-15-21 AT 10:00 AM.**

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
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**Debtor(s):**

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

Nicholas A Koffroth

Kerry L Duffy

Brigette G McGrath

Gary D Underdahl

Nicholas C Brown

Anna Kordas

Mary H Haas

Robert E Richards

Lawrence B Gill

Richard Reding

**United States Bankruptcy Court  
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**Chapter 11**

**Trustee(s):**

Howard Grobstein Liquidating

Represented By  
James Cornell Behrens

**United States Bankruptcy Court  
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**Chapter 11**

**#6.00** Hearing  
RE: [6475] Motion to Authorize Liquidating Trustee to Undertake Final  
Distribution Program for Administrative Claims re QuadraMed and Picis

fr. 6-2-21;7-14-21; 8-4-21

Docket 6475

**Tentative Ruling:**

8/31/2021

**Note: Parties may appear at the hearing either in-person or by telephone. Parties electing to appear in-person shall comply with all requirements regarding social distancing, use of face masks, etc. which may be in effect at the time of the hearing. Parties electing to appear by telephone should contact CourtCall at 888-882-6878 no later than one hour before the hearing.**

The Court requires further briefing as to certain issues. A continued hearing on the Motion shall take place on **November 10, 2021 at 10:00 a.m.**; the briefing deadlines set forth herein shall apply. The parties shall have completed one day of mediation no later than **September 30, 2021**.

**Pleadings Filed and Reviewed:**

- 1)** Memorandum of Decision Granting Motion to Authorize Liquidating Trustee to Undertake Final Distribution Program for Administrative Claimants [Doc. No. 6515] (the "Memorandum")
- 2)** Order Granting Motion to Authorize Liquidating Trustee to Undertake Final Distribution Program for Administrative Claimants [Doc. No. 6523] (the "Distribution Order")
- 3)** Statement of QuadraMed Affinity Corporation and Picis Clinical Solutions Inc. in Support of Administrative Expense Claim [Doc. No. 6613] (the "Motion")
- 4)** Liquidating Trustee's Opposition to Statement of QuadraMed Affinity Corporation and Picis Clinical Solutions Inc. in Support of Administrative Expense Claim [Doc. No. 6624] (the "Opposition")

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- 5)** QuadraMed Affinity Corporation's and Picis Clinical Solutions Inc.'s Response to Liquidating Trustee's Opposition to Administrative Expense Claim [Doc. No. 6632] (the "Reply")

## **I. Facts and Summary of Pleadings**

### **A. Background**

On August 14, 2020, the Court entered an order confirming the *Modified Second Amended Joint Chapter 11 Plan (Dated July 2, 2020) of the Debtors, the Committee, and the Prepetition Secured Creditors* [Doc. No. 5468, Ex. A] (the "Plan"). See Doc. No. 5504 (the "Confirmation Order"). Howard Grobstein has been appointed as the Liquidating Trustee responsible for administering the Plan.

On June 7, 2021, the Court issued a *Memorandum of Decision Granting Motion to Authorize Liquidating Trustee to Undertake Final Distribution Program for Administrative Claimants* [Doc. No. 6515] (the "Memorandum"). An order granting the relief authorized by the Memorandum was entered on June 15, 2021. See Doc. No. 6523 (the "Distribution Order"). The Distribution Order authorized the Liquidating Trustee to implement a Final Distribution Program to pay Administrative Claims, which was made necessary by an unanticipated shortfall in the Administrative Claims Reserve. Under the Final Distribution Program, the Liquidating Trustee will pay administrative creditors an interim payment of approximately 15% of the value of their claims, followed by a final payment which will be made after the final amount of Allowed Administrative Claims has been determined.

To facilitate the implementation of the Distribution Program, on July 14, 2021, the Court conducted a hearing to liquidate the Administrative Claims of various creditors who had opposed entry of the Distribution Order. Pursuant to Court-approved stipulations, the hearing to liquidate the Administrative Claims asserted by QuadraMed Affinity Corporation ("QuadraMed") and Picis Clinical Solutions Inc. ("Picis," and together with QuadraMed, the "Claimants") was continued to September 1, 2021.

### **B. The Administrative Claims Asserted by QuadraMed and Picis**

Pursuant to an agreement with the Debtors (the "QuadraMed Agreement"), QuadraMed licensed to the Debtors electronic healthcare record software known as FLEX (the "QuadraMed Software"). The QuadraMed Software records a medical patient's personal information, medications, list of known allergies, and procedures performed on a patient. The QuadraMed Software allows medical providers to track a

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patient's medical history and treatment.

Pursuant to a similar agreement with the Debtors (the "Picis Agreement," and together with the QuadraMed Agreement, the "Agreements"), Picis licensed to the Debtors electronic healthcare record software known as PulseCheck (the "Picis Software"). The Picis Software is similar to the QuadraMed Software, but is geared toward emergency departments. (The QuadraMed Software and the Picis Software are collectively referred to as the "Software.")

Under the QuadraMed Agreement, the Debtors had the option to purchase maintenance and support services for an annual fee (the "QuadraMed Maintenance Fees"). Under the Picis Agreement, the Debtors had a similar option to purchase maintenance services for an annual fee (the "Picis Maintenance Fees," and together with the QuadraMed Maintenance Fees, the "Software Maintenance Fees"). Under both Agreements, the length of the renewal period for the Software Maintenance Fees was one year. In January 2020, the Debtors renewed the Software Maintenance Fees.

In connection with the sale of St. Francis Medical Center to Prime Healthcare Services, Inc. ("Prime"), the Debtors attempted to assume and assign the QuadraMed and Picis Agreements to Prime. After QuadraMed and Picis objected, the Debtors removed the Agreements from the list of executory agreements designated for assignment. In connection with the sale of Seton Medical Center to AHMC Healthcare Inc. ("AHMC"), the Debtors similarly attempted to assume and assign the Agreements to AHMC. The Debtors once again withdrew the Agreements from the list of executory agreements designated for assignment after Claimants objected.

The administrative claims asserted by QuadraMed and Picis consist of two components. First, Claimants assert that they are owed \$688,285.61 on account of unpaid Software Maintenance Fees (consisting of \$551,801.64 in unpaid QuadraMed Maintenance Fees and \$136,483.97 in unpaid Picis Maintenance Fees). Second, Claimants assert that the Debtors allowed the buyers of the hospitals to use the Software without authorization. QuadraMed asserts an administrative claim of \$10,564,522.72 on account of such alleged unauthorized use (consisting of \$4,343,823.20 for alleged unauthorized use by Santa Clara County, \$2,800,610.48 for alleged unauthorized use by AHMC, and \$3,420,089.04 for alleged unauthorized use by Prime). Picis asserts an administrative claim of \$1,104,308.00 on account of alleged unauthorized use (with the entirety of the unauthorized use claim based upon alleged unauthorized use by Santa Clara County).

**C. Summary of Papers Filed in Connection with the Motion**

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The Liquidating Trustee contends that the vast majority of the Software Maintenance Fees claimed by Claimants were incurred subsequent to September 4, 2020, after the Agreements had been rejected pursuant to § 11.1 of the Plan. According to the Liquidating Trustee, QuadraMed is entitled to Software Maintenance Fees of \$18,393.39, and Picis is not entitled to any Software Maintenance Fees.

The Liquidating Trustee disputes that Claimants are entitled to an administrative claim on account of unauthorized use of the Software. The Liquidating Trustee notes that under the Agreements, the Debtors retained the ownership rights to the patient data accessed via the Software. The Liquidating Trustee asserts that QuadraMed and Picis have failed to establish that the buyers of the hospitals used the Software to track a new encounter with a patient after the purchase transactions closed. **[Note 1]** According to the Liquidating Trustee, because the patient record data always remained property of the Debtors, the buyers of the hospitals were entitled to access that data to migrate it to alternative record-keeping systems, and such access did not and could not have violated the intellectual property rights of QuadraMed and Picis.

QuadraMed and Picis make the following arguments in Reply to the Liquidating Trustee's Opposition:

- 1) The Debtors could have chosen not to renew the Software Maintenance Fees by providing appropriate notice. Having elected not to do so, the Software Maintenance Fees renewed for the entirety of 2020. Because the Software Maintenance Fees arise from a post-petition transaction, the Liquidating Trust is responsible for the entirety of the Software Maintenance Fees, since a post-petition transaction cannot be rejected.
- 2) The Liquidating Trustee's argument that the Claimants' intellectual property rights were not violated because the Debtors owned the data stored within the software misses the point. It does not matter who owns the data; the point is that the buyers used the Software and are required to pay for such use.
- 3) The Liquidating Trustee states that under the terms of the QuadraMed Agreement, the Debtors retained a post-termination wind-down license to continue using the QuadraMed Software. This statement constitutes an admission that the Debtors materially breached the QuadraMed Agreement, because the QuadraMed Agreement states that a wind-down license is permitted only "[i]n the event of termination of this Agreement resulting from [the Debtors'] material breach." QuadraMed Agreement at ¶ 20.2. Because the Trustee has admitted this material breach, Claimants are entitled to an

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**Verity Health System of California, Inc.**

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administrative claim on account of both the Software Maintenance Fees and damages for unauthorized use.

**II. Findings of Fact and Conclusions of Law**

**A. Claimants Are Judicially Estopped From (1) Contesting that the Agreements Were Rejected as of the Effective Date or (2) Asserting that the Agreements Constituted Post-Petition Contracts that Could Not be Rejected**

On June 2, 2020, Claimants filed an objection to the Debtors' proposal to assume and assign the Agreements to Prime, the purchaser of St. Francis Medical Center. *See* Doc. No. 4824 (the "Assumption Objection"). In the Assumption Objection, Claimants cited *In re Catapult Entertainment, Inc.*, 165 F.3d 747 (9th Cir. 1999) for the proposition that § 365(c)(1) barred the Debtors from assuming and assigning the Agreements to Prime absent Claimants' consent. *See* Assumption Objection at ¶¶ 6–9. In response to the Assumption Objection, the Debtors withdrew the Agreements from the list of executory agreements designated for assignment to Prime.

By relying upon § 365(c)(1) and *In re Catapult Entertainment* in the Assumption Objection, Claimants took the position that the Agreements were executory contracts, as opposed to post-petition agreements. Claimants now take the position that the Agreements are post-petition agreements not subject to the Bankruptcy Code's provisions regarding assumption and assignment. *See* Reply [Doc. No. 6632] at ¶ 18 ("The Trustee asserts that the Agreements were rejected pursuant to the Plan and therefore the post-Purported Rejection Date QuadraMed and Picis Maintenance Fees are not administrative expenses. The law is clear, however, that a debtor cannot reject post-petition contracts—such as the Agreements. *See, e.g., In re IML Freight, Inc.*, 37 B.R. 556, 558–59 (Bankr. D. Utah 1984) (section 365 does not apply to post-petition contracts).").

Having succeeded in inducing the Debtors to withdraw the Agreements from the list of contracts designated for assignment, Claimants are now judicially estopped from taking the contrary position that the Agreements are post-petition contracts that are not subject to the Bankruptcy Code's provisions regarding assumption and assignment. *See New Hampshire v. Maine*, 532 U.S. 742, 749 (2001) (holding that judicial estoppel applies where the party prevails in one phase of a case).

**B. The Court Requires Additional Briefing**

The Court requires additional briefing regarding the following issues:

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**Verity Health System of California, Inc.**

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- 1) Claimants assert that they are entitled to an administrative claim based upon the alleged unauthorized use of the Software by the purchasers of the Debtors' hospitals. Claimants have not sufficiently explained why alleged conduct by parties other than the Debtors can support an administrative claim against the estates.
- 2) QuadraMed asserts an administrative claim of \$10,564,522.72 on account of alleged unauthorized use of the Software, and Picis asserts an administrative claim of \$1,104,308.00 on account of alleged unauthorized use of the Software. The basis for these very high claims for damages is not sufficiently clear from the Motion.

Prior to submission of the additional briefing, the Court will require the parties to have completed at least one day of mediation (the deadlines pertaining to mediation are set forth below). Claimants shall submit a supplemental brief addressing the issues set forth above by no later than **October 20, 2021**. The Liquidating Trustee's opposition to Claimants' supplemental brief shall be filed by no later than **October 27, 2021**. A continued hearing on the Motion shall be held on **November 10, 2021 at 10:00 a.m.**

The parties shall have completed one day of mediation no later than **September 30, 2021**. The parties shall promptly meet and confer and select a mediator. No later than **September 15, 2021**, the Liquidating Trustee shall submit an order assigning the matter to mediation. The mediator may be from the District's Mediation Panel, or may be a private mediator selected by the parties. The manner in which the mediation is conducted—whether in-person or by videoconference—shall be at the discretion of the mediator.

The Court will prepare and enter an order setting the continued hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Landon Foody or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.



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**CONT... Verity Health System of California, Inc.**

**Chapter 11**

**Note 1**

The Liquidating Trustee has not submitted a declaration in support of his Opposition to the Motion. Pursuant to the Local Bankruptcy Rules, the Court construes all assertions made in the Opposition only as argument, not as evidence.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

Nicholas A Koffroth

Kerry L Duffy

Brigette G McGrath

Gary D Underdahl

Nicholas C Brown

Anna Kordas

Mary H Haas

Robert E Richards

Lawrence B Gill

Richard Reding

**Trustee(s):**

Howard Grobstein Liquidating

Represented By

James Cornell Behrens

**United States Bankruptcy Court  
Central District of California  
Los Angeles  
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**2:18-20151 Verity Health System of California, Inc.**

**Chapter 11**

**#7.00** Hearing re

(1) Docket No. [4671], Application for Allowance of DaVita Inc.'s Administrative Expense Claim for Postpetition Services Provided to St. Vincent Medical Center; and

(2) Docket No. [5227], Application for Allowance of DaVita Inc.'s Administrative Expense Claim for Postpetition Services Provided to St. Francis Medical Center.

Docket 0

**\*\*\* VACATED \*\*\* REASON: AMENDED MOTION FILED 8-11-21 [D.E. 6610]**

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
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**Debtor(s):**

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

Nicholas A Koffroth

Kerry L Duffy

Brigette G McGrath

Gary D Underdahl

Nicholas C Brown

Anna Kordas

Mary H Haas

Robert E Richards

Lawrence B Gill

**United States Bankruptcy Court  
Central District of California  
Los Angeles  
Judge Ernest Robles, Presiding  
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**CONT... Verity Health System of California, Inc.**

**Chapter 11**

Richard Reding

**Trustee(s):**

Howard Grobstein Liquidating

Represented By  
James Cornell Behrens

**United States Bankruptcy Court  
Central District of California  
Los Angeles  
Judge Ernest Robles, Presiding  
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**Wednesday, September 1, 2021**

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**2:19-21593 C & F Sturm, LLC**

**Chapter 11**

**#8.00** HearingRE: [115] Application for Compensation (First and Final), with Proof of Service for Menchaca & Company LLP, Accountant, Period: 5/18/2021 to 8/9/2021, Fee: \$5,618.50, Expenses: \$0.00.

Docket 115

**Tentative Ruling:**

8/31/2021

**Note: Parties may appear at the hearing either in-person or by telephone. Parties electing to appear in-person shall comply with all requirements regarding social distancing, use of face masks, etc. which may be in effect at the time of the hearing. Parties electing to appear by telephone should contact CourtCall at 888-882-6878 no later than one hour before the hearing.**

Having reviewed the first and final application for fees and expenses filed by this applicant, the court approves the application and awards the fees and expenses set forth below:

Fees: \$5,618.50 approved [*See* Doc. No. 115]

Expenses: \$0 approved [*Id.*]

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Landon Foody at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Applicant shall submit a conforming order within seven days of the hearing.

<b>Party Information</b>
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Los Angeles  
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**CONT... C & F Sturm, LLC**

**Chapter 11**

**Debtor(s):**

C & F Sturm, LLC

Represented By  
Stella A Havkin

**United States Bankruptcy Court  
Central District of California  
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**2:19-21593 C & F Sturm, LLC**

**Chapter 11**

**#9.00** HearingRE: [113] Application for Compensation Final Fee Application; Supplement and Declarations for Havkin & Shrago, Debtor's Attorney, Period: 7/10/2020 to 7/30/2021, Fee: \$14562.50, Expenses: \$199.45.

Docket 113

**Tentative Ruling:**

8/31/2021

**Note: Parties may appear at the hearing either in-person or by telephone. Parties electing to appear in-person shall comply with all requirements regarding social distancing, use of face masks, etc. which may be in effect at the time of the hearing. Parties electing to appear by telephone should contact CourtCall at 888-882-6878 no later than one hour before the hearing.**

Having reviewed the second and final application for fees and expenses filed by this applicant, the court approves the application and awards the fees and expenses set forth below (amounts previously awarded on an interim basis are now deemed final):

Fees: \$36,617.50 approved (consisting of \$22,055 awarded on an interim basis on August 7, 2020 [*See* Doc. No. 61] and \$14,562.50 sought in connection with this application [*See* Doc. No. 113])

Expenses: \$2,267.60 (consisting of \$2,068.15 awarded on an interim basis on August 7, 2020 [*See* Doc. No. 61] and \$199.45 sought in connection with this application [*Id.*])

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Landon Foody at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the

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**CONT...** C & F Sturm, LLC  
hearing.

**Chapter 11**

Applicant shall submit a conforming order within seven days of the hearing.

<b>Party Information</b>
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**Debtor(s):**

C & F Sturm, LLC

Represented By  
Stella A Havkin

**United States Bankruptcy Court  
Central District of California  
Los Angeles  
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**Wednesday, September 1, 2021**

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10:00 AM

**2:20-14485 Michael Stuart Brown**

**Chapter 11**

**#10.00** HearingRE: [169] Application for Compensation First Application of Subchapter V Trustee for Approval of Fees and Reimbursement of Expenses; Declaration of Gregory K. Jones in Support for Gregory Kent Jones (TR), Trustee, Period: 6/3/2020 to 6/30/2021, Fee: \$35,640, Expenses: \$278.30. (Jones (TR), Gregory)

Docket 169

**Tentative Ruling:**

8/31/2021

**Note: Parties may appear at the hearing either in-person or by telephone. Parties electing to appear in-person shall comply with all requirements regarding social distancing, use of face masks, etc. which may be in effect at the time of the hearing. Parties electing to appear by telephone should contact CourtCall at 888-882-6878 no later than one hour before the hearing.**

Having reviewed the first interim application for fees and expenses filed by the Subchapter V Trustee, the court approves the application and awards the fees and expenses set forth below:

Fees: \$35,640 approved [*See* Doc. No. 169]

Expenses: \$278.30 [*See id.*]

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Landon Foody at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

The Subchapter V Trustee shall submit a conforming order within seven days of the hearing.



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**CONT... Michael Stuart Brown**

**Chapter 11**

<b>Party Information</b>
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**Debtor(s):**

Michael Stuart Brown

Represented By  
Michael F Chekian

**Trustee(s):**

Gregory Kent Jones (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
Los Angeles  
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**2:20-14485 Michael Stuart Brown**

**Chapter 11**

**#11.00** HearingRE: [163] Application for Compensation for Michael F Chekian, Debtor's Attorney, Period: 12/21/2020 to 7/19/2021, Fee: \$26,775.00, Expenses: \$260.85.

Docket 163

**Tentative Ruling:**

8/31/2021

**Note: Parties may appear at the hearing either in-person or by telephone. Parties electing to appear in-person shall comply with all requirements regarding social distancing, use of face masks, etc. which may be in effect at the time of the hearing. Parties electing to appear by telephone should contact CourtCall at 888-882-6878 no later than one hour before the hearing.**

Having reviewed the third interim application for fees and expenses filed by this applicant, the court approves the application and awards the fees and expenses set forth below:

Fees: \$26,775 approved [Doc. No. 163]

Expenses: \$260.85 approved [*Id.*]

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Landon Foody at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Applicant shall submit a conforming order within seven days of the hearing.

<b>Party Information</b>
--------------------------

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Central District of California  
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**CONT... Michael Stuart Brown**

**Chapter 11**

**Debtor(s):**

Michael Stuart Brown

Represented By

Michael F Chekian

**Trustee(s):**

Gregory Kent Jones (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
Los Angeles  
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10:00 AM

**2:21-10817 CA HOME BUYERS 247, LLC**

**Chapter 11**

**#12.00** Hearing  
RE: [20] U.S. Trustee Motion to dismiss or convert or appoint a trustee .  
(Attachments: # 1 COS)(united states trustee (hy))

Docket 20

**\*\*\* VACATED \*\*\* REASON: DISMISSED 7-30-21**

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
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**Debtor(s):**

CA HOME BUYERS 247, LLC

Represented By  
Matthew Abbasi

**United States Bankruptcy Court  
Central District of California  
Los Angeles  
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**Wednesday, September 1, 2021**

**Hearing Room 1568**

10:00 AM

**2:21-12222 collab9, LLC, a Delaware limited liability company**

**Chapter 11**

**#13.00** HearingRE: [189] Motion to Extend Exclusivity Period for Filing a Chapter 11 Plan and Disclosure Statement Notice of Motion for Order Extending Plan Exclusivity and Debtor's Motion for Order Extending Plan Exclusivity Periods; Memorandum of Points and Authorities; Declaration of George Blanco in Support Thereof w/Proof of Service

Docket 189

**Tentative Ruling:**

8/31/2021

**Note: Parties may appear at the hearing either in-person or by telephone. Parties electing to appear in-person shall comply with all requirements regarding social distancing, use of face masks, etc. which may be in effect at the time of the hearing. Parties electing to appear by telephone should contact CourtCall at 888-882-6878 no later than one hour before the hearing.**

For the reasons set forth below, the Motion is **GRANTED**.

**Pleadings Filed and Reviewed**

1. Motion to Extend Exclusivity Period for Filing a Chapter 11 Plan and Disclosure Statement; Notice of Motion for Order Extending Plan Exclusivity and Debtor's Motion for Order Extending Plan Exclusivity Periods; Memorandum of Points and Authorities; Declaration of George Blanco in Support Thereof (the "Motion to Extend the Exclusivity Periods") [Doc. No. 189]
2. As of the date of this tentative ruling, no objection is on file

**I. Facts and Summary of Pleadings**

On March 19, 2021, Collab9, LLC (the "Debtor") filed its chapter 11 petition (the "Petition Date"). The Debtor is a cloud security service provider for managed voice, collaboration, conferencing and contact center services primarily for U.S. public sector customers. The Debtor's largest creditor, Avaya, made an unsecured loan to the Debtor for \$10 million (the "Avaya Loan") in May of 2019 that stated that the loan was to be used "to fund general working capital of the Debtor's business

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**CONT... collab9, LLC, a Delaware limited liability company**

**Chapter 11**

operations" and required the Debtor "to seek Avaya's consent to, among other things, incur additional debt, effect a liquidation or dissolution, sell or encumber the Debtor's assets, or enter into any agreement with an insider." The Avaya Loan was evidenced by a convertible promissory note (the "Avaya Note"), also dated May 20, 2019, made by the Debtor payable to Avaya for \$10 million. The Debtor averred that its business operations had been hampered by Avaya and the unfriendly terms of the Avaya Note. On April 1, 2021, the Debtor filed its Sale Motion. *See* Doc. No. 55. The Debtor was unable to find a completely disinterested buyer for its assets, and instead requested to sell its assets to SecureComm, a company formed by two of the Debtor's principals. The Court approved the sale on May 20, 2021, and the sale closed on May 31, 2021. *See* Doc. Nos. 153 & 167.

Debtor intends to file a chapter 11 plan of liquidation that will propose that all of the Debtor's assets pass to a liquidating trust. As of the closed sale on May 31, 2021, Debtor's assets primarily consist of claims against Avaya pending in the arbitration proceeding the Debtor commenced against Avaya. Since the closed sale, Debtor has obtained information regarding potential further recovery and/or funding for the benefit of the estate and wishes to continue investigating and negotiating the information to include in the disclosure statement.

On July 14, 2021, the Debtor filed its Motion to Extend the Exclusivity Periods. The Debtor requests that this Court enter an order extending the Debtor's exclusive periods to file a chapter 11 plan (the "Plan Filing Exclusivity Deadline") and obtain acceptances of a chapter 11 plan (the "Plan Acceptance Exclusivity Deadline," and together with the Plan Filing Exclusivity Deadline, the "Exclusivity Periods") set forth in 11 U.S.C. § 1121(b) and (c)(3) for approximately sixty (60) days, to and including September 15, 2021, and November 14, 2021, respectively. The Debtor believes that an extension is warranted because it has made "good faith progress in this case" and is in the process of potentially obtaining additional funding for the estate, information which would need to be included in its disclosure statement and plan. This is the Debtor's first request for an extension of the Exclusivity Periods. Motion to Extend the Exclusivity Periods at 17.

## **II. Findings of Fact and Conclusions of Law**

Section 1121(b) gives the Debtor the exclusive right to file a plan during the first 120 days after the date of the order for relief. If the Debtor files a plan within the 120-day exclusivity period, §1121(c)(3) provides that exclusivity is extended for an

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**Chapter 11**

additional 60 days to maintain exclusivity during the plan solicitation period. If the plan has not been accepted by holders of impaired claims before 180 days after the date of the order for relief, then the exclusivity period terminates, unless the debtor has obtained an extension. § 1121(c)(3). Section 1121(d) permits the Court to reduce or increase the exclusivity period "for cause." Section 1121 provides the bankruptcy court "maximum flexibility to suit various types of reorganization proceedings." *In re Public Service Company of New Hampshire*, 88 B.R. 521, 534 (Bankr. D.N.H. 1988).

The Court finds that cause exists to extend the Exclusivity Periods in accordance with the Debtor's request. The Debtor has been working diligently throughout the bankruptcy process and as of May 31, 2021, Debtor consummated and closed a sale of substantially all of Debtor's assets. Since the May 31, 2021 sale, Debtor continues to obtain and evaluate new information regarding potential further recovery and/or funding for the benefit of the estate. Debtor remains compliant with all requirements and obligations of a chapter 11 debtor in possession and has moved this case forward diligently and quickly. An extension of the Exclusivity Periods will give the Debtor enough time to file an appropriate Plan, to file a comprehensive disclosure statement, and an extension will not prejudice creditors. *See* Motion to Extend the Exclusivity Periods at 17-18.

The Plan Filing Exclusivity Deadline is extended from July 17, 2021 to and including September 15, 2021. The Plan Acceptance Exclusivity Deadline is extended from September 15, 2021 to and including November 14, 2021.

### **III. Conclusion**

For the reasons set forth above, the Motion to Extend the Exclusivity Periods is **GRANTED**.

The Debtor shall submit a conforming order, incorporating this tentative ruling by reference, within seven days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Landon Foody or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will

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determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

<b>Party Information</b>
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**Debtor(s):**

collab9, LLC, a Delaware limited

Represented By  
Victor A Sahn  
David S Kupetz  
Claire K Wu



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**2:21-12463 J.H. Bryant Jr., Inc.**

**Chapter 11**

**#14.00** HearingRE: [112] Motion - Debtor and Debtor-in-Possession's Notice of Motion and Motion for Order Authorizing Debtor to Incur Unsecured Debt; Memorandum of Points and Authorities, and Declaration of John H. Bryant III in Support Thereof; proof of service

Docket 112

**Tentative Ruling:**

8/31/2021

**Note: Parties may appear at the hearing either in-person or by telephone. Parties electing to appear in-person shall comply with all requirements regarding social distancing, use of face masks, etc. which may be in effect at the time of the hearing. Parties electing to appear by telephone should contact CourtCall at 888-882-6878 no later than one hour before the hearing.**

For the reasons set forth below, the Motion is **GRANTED**.

**Pleadings Filed and Reviewed**

- 1) Debtor and Debtor-in-Possession's Notice of Motion and Motion for Order Authorizing Debtor to Incur Unsecured Debt; Memorandum of Points and Authorities, and Declaration of John H. Bryant III in Support Thereof [Doc. No. 112] (the "Motion")
- 2) Statement Regarding Cash Collateral or Debtor in Possession Financing [Doc. No. 113]
- 3) As of the date of this tentative ruling, no opposition is on file

**I. Facts and Summary of Pleadings**

On March 26, 2021, J.H. Bryant, Jr. Inc. (the "Debtor") filed its petition, electing to proceed under subchapter V of chapter 11 of the Bankruptcy Code. The Debtor, founded in 1951, is a contractor for commercial and industrial remodeling. The president of the Debtor is John H. Bryant III ("Bryant"). The Debtor was involved in two Superior Court actions stemming from a financial scheme of Bryant's brother. Both actions were tried and the Debtor was found to be liable. A post-trial settlement

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**J.H. Bryant Jr., Inc.**

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was reached in one action, which required the Debtor to pay \$772,000. Bryant loaned the Debtor funds to make a first payment on that settlement, and the outstanding amount owed under the settlement is approximately \$305,000. In the second action, judgment was entered against the Debtor on March 8, 2021 in the amount of \$1,531,066.32. The Debtor filed its bankruptcy proceeding shortly thereafter, after it was unable to come to a resolution with the judgment creditors.

The Debtor seeks authorization and approval from the Court to accept Bryant's unsecured, interest free loan (the "Loan") of \$70,000 as post-petition financing under § 364. The Debtor requires funding to maintain its business and must pay premiums for several insurance policies that are required by the Office of the United States Trustee and that are essential to the Debtor's operations and preservation of its property and assets. The Debtor believes Bryant's terms are better than commercially fair and reasonable terms as Bryant does not require a lien or payment of interest. The Debtor submits that authorization of the Loan will ensure that the Debtor can continue necessary business operations and that authorization will not prejudice the legitimate interests of creditors and other parties in interest. The Debtor respectfully requests that the Court enter an order authorizing and approving the Loan from Bryant and authorize and approve payment of the Loan as an administrative expense due within 60 days of receipt of the Loan without further order of the Court.

## **II. Findings of Fact and Conclusions of Law**

Section 364 governs the obtaining of credit or incurring of debt by a debtor in possession and sets forth the incentives that may be offered to induce potential lenders to extend post-petition credit. *In re Stanton*, 248 B.R. 823, 828 (B.A.P. 9th Cir. 2000) *aff'd*, 285 F.3d 888 (9th Cir. 2002) *opinion amended and superseded on denial of reh'g*, 303 F.3d 939 (9th Cir. 2002) and *aff'd*, 303 F.3d 939 (9th Cir. 2002). Section 364 of the Bankruptcy Code provides, in pertinent part, that:

(a) If the trustee is authorized to operate the business of the debtor under section 721, 1108, 1183, 1184, 1203, 1204, or 1304 of this title, unless the court orders otherwise, the trustee may obtain unsecured credit and incur unsecured debt in the ordinary course of business allowable under section 503(b)(1) of this title as an

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**J.H. Bryant Jr., Inc.**

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administrative expense.

(b) The court, after notice and a hearing, may authorize the trustee to obtain unsecured credit or to incur unsecured debt other than under subsection (a) of this

this section, allowable under section 503(b)(1) of this title as an administrative expense.

Section 503(b)(1) provides, in relevant part: "[a]fter notice and a hearing, there shall be allowed administrative expenses, other than claims allowed under section 502(f) of this title, including . . . [t]he actual, necessary costs and expenses of preserving the estate . . . ." 11 U.S.C. § 503(b)(1)(A).

Section 364(e) governs the reversal or modification of credit or debt incurred under this section. Under § 364(e) "[t]he reversal or modification on appeal of an authorization under this section to obtain or incur debt . . . does not affect the validity of any debt so incurred . . . to an entity that extended such credit in good faith. . . ." Good faith is determined by "the integrity of an actor's conduct during the proceedings" *Burchinal v. Cent. Wash. Bank*, 829 F.2d 1484, 1488 (9th Cir. 1987). Courts generally rely on examples of negative conduct rather than positive conduct in making their determination. *In re Solidus Networks, Inc. v. Whorl, LLC*, 2008 WL 8462968 at \*4 (9th Cir. BAP 2008).

The Court finds the terms of the Loan are reasonable and necessary to preserve the estate under § 503(b)(1) because the funds shall be used to pay necessary insurance premiums required to continue operation of the business and to continue under the Chapter 11 plan of reorganization. The Loan is in the amount of \$70,000 and requires repayment as an administrative expense due within 60 days of receipt of the Loan. Debtor states the intent of the Loan is to bridge the gap caused by delayed payments from accounts and to pay insurance premiums required to maintain and operate the Debtor's business. Motion at 3-4. In accordance with § 364(e) and in reviewing the Declaration of John H. Bryant III attached to the Motion, the Court finds the Loan to be in good faith and is therefore afforded the protections under the Code. The Court grants Debtor's motion and permits repayment within 60 days of the receipt of Bryant's Loan without further action by the court.

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**CONT... J.H. Bryant Jr., Inc.**

**Chapter 11**

**III. Conclusion**

Based upon the foregoing, the Motion is **GRANTED** and the 14 day stay is waived.

The Debtor shall submit a conforming order, incorporating this tentative ruling by reference, within seven days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Landon Foody at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

<b>Party Information</b>
--------------------------

**Debtor(s):**

J.H. Bryant Jr., Inc.

Represented By

Zev Shechtman

Michael G D'Alba

Aaron E DE Leest

Alphamorlai Lamine Kebeh

**Trustee(s):**

Susan K Seflin (TR)

Pro Se

**United States Bankruptcy Court  
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**2:17-13256 Felicidad Ferrer and Renato Ferrer**

**Chapter 7**

**#100.00 APPLICANT: Trustee: Wesley Avery**

Hearing re [95] and [96] Trustee's Final Report and Applications for Compensation

Docket 0

**Tentative Ruling:**

8/31/2021

**Note: Parties may appear at the hearing either in-person or by telephone. Parties electing to appear in-person shall comply with all requirements regarding social distancing, use of face masks, etc. which may be in effect at the time of the hearing. Parties electing to appear by telephone should contact CourtCall at 888-882-6878 no later than one hour before the hearing.**

No objection has been filed in response to the Trustee's Final Report. This court approves the fees and expenses, and payment, as requested by the Trustee, as follows:

Total Trustee's Fees: \$7,399.57 [*see* Doc. No. 95]

Total Trustee's Expenses: \$56.95 [*see id.*]

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Landon Foody at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

The chapter 7 trustee shall submit a conforming order within seven days of the hearing.

**Party Information**

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**CONT... Felicidad Ferrer and Renato Ferrer**

**Chapter 7**

**Debtor(s):**

Felicidad Ferrer

Represented By  
Joshua R Engle

**Joint Debtor(s):**

Renato Ferrer

Represented By  
Joshua R Engle

**Trustee(s):**

Wesley H Avery (TR)

Represented By  
Varand Gourjian

**United States Bankruptcy Court  
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**2:17-13256 Felicidad Ferrer and Renato Ferrer**

**Chapter 7**

**#101.00 APPLICANT: Attorney for Trustee Fees (Other Firm) - GOURJIAN LAW GROUP**

Hearing re [95] and [96] Trustee's Final Report and Applications for Compensation

Docket 0

**Tentative Ruling:**

8/31/2021

**Note: Parties may appear at the hearing either in-person or by telephone. Parties electing to appear in-person shall comply with all requirements regarding social distancing, use of face masks, etc. which may be in effect at the time of the hearing. Parties electing to appear by telephone should contact CourtCall at 888-882-6878 no later than one hour before the hearing.**

Having reviewed the first and final application for fees and expenses filed by this applicant, the court approves the application and awards the fees and expenses set forth below:

Fees: \$41,170 approved [*See* Doc. Nos. 92 & 94] (Applicant requested \$51,170 in its application; however, applicant then agreed to voluntarily reduce its fees by \$10,000 to \$41,170. In addition, applicant incorrectly states that its employment application was approved *nunc pro tunc* to December 19, 2017. The Court denied the applicant's request for *nunc pro tunc* employment without prejudice and allowed the applicant to make a *nunc pro tunc* showing in its fee application if it so desired. The applicant did not make a *nunc pro tunc* showing in its fee application; however, because the applicant has reduced its fees by \$10,000 and the pre-employment work amounts to \$8,925, the issue of *nunc pro tunc* employment is moot.)

Expenses: \$500.06 approved [*Id.*]

No appearance is required if submitting on the court's tentative ruling. If you intend to

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**CONT... Felicidad Ferrer and Renato Ferrer**

**Chapter 7**

submit on the tentative ruling, please contact Daniel Koontz or Landon Foody at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Applicant shall submit a conforming order within seven days of the hearing.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Felicidad Ferrer

Represented By  
Joshua R Engle

**Joint Debtor(s):**

Renato Ferrer

Represented By  
Joshua R Engle

**Trustee(s):**

Wesley H Avery (TR)

Represented By  
Varand Gourjian



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**2:17-13256 Felicidad Ferrer and Renato Ferrer**

**Chapter 7**

**#102.00** APPLICANT: Accountant for Trustee Fees (Other Firm) - CBIZ  
VALUATION GROUP, LLC

Hearing re [95] and [96] Trustee's Final Report and Applications for  
Compensation

Docket 0

**Tentative Ruling:**

8/31/2021

**Note: Parties may appear at the hearing either in-person or by telephone. Parties electing to appear in-person shall comply with all requirements regarding social distancing, use of face masks, etc. which may be in effect at the time of the hearing. Parties electing to appear by telephone should contact CourtCall at 888-882-6878 no later than one hour before the hearing.**

Having reviewed the first and final application for fees and expenses filed by this applicant, the court approves the application and awards the fees and expenses set forth below:

Fees: \$17,500 approved [*See* Doc. Nos. 91 & 93] (Applicant requested in \$38,300.50 in its application; however, applicant then agreed to voluntarily reduce its fees to \$17,500)

Expenses: \$0 approved [*Id.*] (Applicant requested in \$400 in its application; however, applicant then agreed to voluntarily reduce its expenses to \$0)

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Landon Foody at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic

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**CONT... Felicidad Ferrer and Renato Ferrer**

**Chapter 7**

appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Applicant shall submit a conforming order within seven days of the hearing.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Felicidad Ferrer

Represented By  
Joshua R Engle

**Joint Debtor(s):**

Renato Ferrer

Represented By  
Joshua R Engle

**Trustee(s):**

Wesley H Avery (TR)

Represented By  
Varand Gourjian

**United States Bankruptcy Court  
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**Wednesday, September 1, 2021**

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11:00 AM

**2:19-20867 South Bay Investment Group, Inc.**

**Chapter 7**

Adv#: 2:21-01117 Miller v. Lyell et al

**#103.00** Hearing  
RE: [13] Motion to Dismiss Adversary Proceeding Notice of Motion and Motion of Defendants Christopher E Lyell and Bradley K Hansen to Dismiss Complaint; Memorandum of Points and Authorities in Support Thereof (Till, James)

Docket 13

**\*\*\* VACATED \*\*\* REASON: CONTINUED 9-8-21 AT 10:00 A.M.**

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

South Bay Investment Group, Inc.

Represented By  
Larry D Simons

**Defendant(s):**

Christopher E Lyell

Represented By  
James E Till

Bradley K Hansen

Represented By  
James E Till

Manhattan Beach Ventures, LLC

Pro Se

Prime Enterprises LLC

Represented By  
Dean G Rallis Jr

Paul Johnson

Represented By  
Dean G Rallis Jr

**Plaintiff(s):**

Elissa D. Miller

Represented By  
Matthew Faust

**United States Bankruptcy Court  
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**CONT... South Bay Investment Group, Inc.**

**Chapter 7**

**Trustee(s):**

Elissa Miller (TR)

Represented By  
Matthew Faust

**United States Bankruptcy Court  
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**Wednesday, September 1, 2021**

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11:00 AM

**2:19-21148 Efren Zavala and Maria Padilla**

**Chapter 7**

**#104.00 APPLICANT: Trustee: Wesley H Avery**

Hearing re [82] and [83] Trustee's Final Report and Applications for  
Compensation

Docket 0

**Tentative Ruling:**

8/31/2021

**Note: Parties may appear at the hearing either in-person or by telephone. Parties electing to appear in-person shall comply with all requirements regarding social distancing, use of face masks, etc. which may be in effect at the time of the hearing. Parties electing to appear by telephone should contact CourtCall at 888-882-6878 no later than one hour before the hearing.**

No objection has been filed in response to the Trustee's Final Report. This court approves the fees and expenses, and payment, as requested by the Trustee, as follows:

Total Trustee's Fees: \$21,750 [*see* Doc. No. 82]

Total Trustee's Expenses: \$222.35 [*see id.*]

Franchise Tax Board: \$10.07 [*see id.*]

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Landon Foody at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

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**CONT... Efren Zavala and Maria Padilla**

**Chapter 7**

The chapter 7 trustee shall submit a conforming order within seven days of the hearing.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Efren Zavala

Represented By  
Michael O Akhidenor

**Joint Debtor(s):**

Maria Padilla

Represented By  
Michael O Akhidenor

**Trustee(s):**

Wesley H Avery (TR)

Represented By  
Joseph E. Caceres

**United States Bankruptcy Court  
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**2:19-21148 Efren Zavala and Maria Padilla**

**Chapter 7**

**#105.00 APPLICANT: Accountant: HAHN FIFE & COMPANY**

Hearing re [82] and [83] Trustee's Final Report and Applications for Compensation

Docket 0

**Tentative Ruling:**

8/31/2021

**Note: Parties may appear at the hearing either in-person or by telephone. Parties electing to appear in-person shall comply with all requirements regarding social distancing, use of face masks, etc. which may be in effect at the time of the hearing. Parties electing to appear by telephone should contact CourtCall at 888-882-6878 no later than one hour before the hearing.**

Having reviewed the first and final application for fees and expenses filed by this applicant, the court approves the application and awards the fees and expenses set forth below:

Fees: \$3,015.00 approved [Doc. No. 80]

Expenses: \$429.40 approved [*Id.*]

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Landon Foody at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Applicant shall submit a conforming order within seven days of the hearing.

<b>Party Information</b>
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**CONT... Efren Zavala and Maria Padilla**

**Chapter 7**

**Debtor(s):**

Efren Zavala

Represented By  
Michael O Akhidenor

**Joint Debtor(s):**

Maria Padilla

Represented By  
Michael O Akhidenor

**Trustee(s):**

Wesley H Avery (TR)

Represented By  
Joseph E. Caceres



**United States Bankruptcy Court  
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**2:19-21148 Efren Zavala and Maria Padilla**

**Chapter 7**

**#106.00 APPLICANT: Attorney for Trustee (Other firm): CACERES & SHAMASH LLP**

Hearing re [82] and [83] Trustee's Final Report and Applications for  
Compensation

Docket 0

**Tentative Ruling:**

8/31/2021

**Note: Parties may appear at the hearing either in-person or by telephone. Parties electing to appear in-person shall comply with all requirements regarding social distancing, use of face masks, etc. which may be in effect at the time of the hearing. Parties electing to appear by telephone should contact CourtCall at 888-882-6878 no later than one hour before the hearing.**

Having reviewed the first and final application for fees and expenses filed by this applicant, the court approves the application and awards the fees and expenses set forth below:

Fees: \$16,335 approved (Applicant requested \$16,650; however, the Applicant's effective date of employment, per this Court's December 3, 2019 Order [Doc. No. 22], is October 28, 2019. Therefore, because the Applicant has not made any *nunc pro tunc* showing for fees for work done prior to the effective date of employment, the Applicant's fees are reduced by \$315 to \$16,335 to account for the pre-employment work.) [Doc. No. 79]

Expenses: \$823.25 approved [*Id.*]

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Landon Foody at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will

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Central District of California  
Los Angeles  
Judge Ernest Robles, Presiding  
Courtroom 1568 Calendar**

**Wednesday, September 1, 2021**

**Hearing Room 1568**

11:00 AM

**CONT... Efren Zavala and Maria Padilla**

**Chapter 7**

determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Applicant shall submit a conforming order within seven days of the hearing.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Efren Zavala

Represented By  
Michael O Akhidenor

**Joint Debtor(s):**

Maria Padilla

Represented By  
Michael O Akhidenor

**Trustee(s):**

Wesley H Avery (TR)

Represented By  
Joseph E. Caceres

**United States Bankruptcy Court  
Central District of California  
Los Angeles  
Judge Ernest Robles, Presiding  
Courtroom 1568 Calendar**

**Wednesday, September 1, 2021**

**Hearing Room 1568**

11:00 AM

**2:20-10987 Steve Lewis**

**Chapter 7**

Adv#: 2:20-01114 LANGLOIS FAMILY LAW APC v. LEWIS

**#107.00** HearingRE: [77] Motion Notice of Motion and Motion to 1)Exclude Experts Designated by Plaintiff, as Untimely; 2) For Failure to Adhere to Requirements of FRCP 26(A)(2); Memorandum of Points and Authorities and Declaration in Support (Sarver, Allan)

Docket 77

**Tentative Ruling:**

8/31/2021

For the reasons set forth below, the Motion is **GRANTED**.

**Pleadings Filed and Reviewed:**

- 1) Notice of Motion and Motion to (1) Exclude Experts Designated by Plaintiff, as Untimely; (2) For Failure to Adhere to Requirements of FRCP 26(a)(2) [Doc. No. 77] (the "Motion")
- 2) Opposition and Declaration of Ray B. Bowen, Jr., Counsel for Plaintiff, Objecting to Defendant's Motion to Exclude Expert Witnesses Designated by Plaintiff [Doc. No. 80] (the "Opposition")
- 3) Reply to Opposition and Declaration of Ray B. Bowen, Jr. Counsel for Plaintiff, Objecting to Defendant's Motion to (1) Exclude Expert Witnesses Designated by Plaintiff, as Untimely, (2) for Failure to Adhere to Requirements of FRCP 26(a)(2) [Doc. No. 81] (the "Reply")
  - a) Evidentiary Objections to Declaration of Ray B. Bowen, Jr., Counsel for Plaintiff in Support of the Opposition to Defendant's Motion to (1) Exclude Expert Witnesses Designated by Plaintiff, as Untimely, (2) for Failure to Adhere to Requirements of FRCP 26(a)(2) [Doc. No. 82]

**I. Facts and Summary of Pleadings**

In December 2019, Langlois Family Law, APC ("Plaintiff") obtained a judgment in the Los Angeles Superior Court against Steve Lewis ("Defendant") in the amount of \$152,540.75 (the "State Court Judgment"). The State Court Judgment is based upon Defendant's failure to pay Plaintiff for legal services that Plaintiff provided to Defendant in a marital dissolution proceeding.

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**CONT...**

**Steve Lewis**

**Chapter 7**

Defendant filed a voluntary Chapter 7 petition on January 29, 2020 (the "Petition Date"). On May 1, 2020, Plaintiff filed a *Complaint Objecting to the Debtor's Discharge Pursuant to 11 U.S.C. § 727(a)(4)* [Doc. No. 1] (the "Complaint"). On July 15, 2020, the Court dismissed the Complaint, but gave Plaintiff leave to amend. On July 20, 2020, Plaintiff filed the operative *First Amended Complaint Objecting to the Debtor's Discharge Pursuant to 11 U.S.C. § 727(a)(4)* [Doc. No. 26] (the "FAC"), which alleges that Defendant should be denied a discharge for knowingly and fraudulently making false oaths and accounts on his bankruptcy schedules.

On September 8, 2020, the Court denied Defendant's motion to dismiss the FAC for failure to state a claim upon which relief could be granted. *See* Doc. Nos. 46 (order denying Motion to Dismiss FAC) and 44 (ruling explaining reasons why the FAC stated plausible claims for relief). On September 16, 2020, Defendant filed an Answer to the Complaint. *See* Doc. No. 48.

On October 13, 2020, the Court issued a Scheduling Order [Doc. No. 56], which fixed February 23, 2021 as the deadline to disclose expert witnesses and expert witness reports, and fixed March 25, 2021 as the deadline to disclose rebuttal expert witnesses and rebuttal expert witness reports. With respect to mediation, the Scheduling Order provided: "Based upon the parties' request that mediation be deferred until after initial discovery has been completed, the Court will not order the matter to formal mediation at this time. The Court will consider whether formal mediation is appropriate at a continued Status Conference ...." Scheduling Order at ¶ 2.

On March 1, 2021, the Court approved a stipulation which (1) extended the deadline to disclose expert witnesses to May 25, 2021, (2) extended the deadline to disclose rebuttal expert witnesses to June 24, 2021, (3) fixed July 13, 2021 as the last date to complete discovery relating to expert witnesses, (4) fixed July 24, 2021 as the last day to complete discovery not related to expert witnesses, and (5) fixed July 24, 2021 as the last day for dispositive motions to be heard. *See* Doc. No. 68.

On May 10, 2021, the Court issued an order vacating a Status Conference which had been set for May 11, 2021 [Doc. No. 71] (the "May 2021 Order"). The May 2021 Order provided in relevant part:

The Court set this Status Conference to consider whether to refer this matter to formal mediation. The Complaint's sole claim for relief is for denial of discharge, pursuant to § 727(a)(4)(A). Plaintiff's position is that mediation would not be productive, because the action will result either in a denial of

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**CONT...**

**Steve Lewis**

**Chapter 7**

Defendant's discharge or a granting of Defendant's discharge, leaving no middle ground for compromise. Defendant requests that the matter be referred to mediation....

The Court disagrees with Plaintiff's contention that mediation cannot be productive. According to the Complaint, Plaintiff obtained a State Court Judgment against Defendant in the amount of \$152,540.75. A potential settlement could involve dismissal of the action in exchange for a non-dischargeable judgment for a sum certain against Defendant. Therefore, this matter shall be referred to the Mediation Panel. The parties shall meet and confer and select a Mediator from this District's Mediation Panel....

To provide the parties sufficient time to engage in mediation, the Pretrial Conference is **CONTINUED** from **August 10, 2021 at 11:00 a.m.** to **October 12, 2021 at 11:00 a.m.** The trial is **CONTINUED** from the week of August 23, 2021 to the week of **October 25, 2021**.

May 2021 Order.

The May 2021 Order did *not* extend the previously-set deadlines to disclose expert witnesses, disclose rebuttal expert witnesses, file dispositive motions, complete expert discovery, and complete non-expert discovery.

**Summary of Papers Filed in Connection with Defendant's Motion to Exclude Experts Designated by Plaintiff as Untimely**

On August 2, 2021, Plaintiff disclosed to Defendant the identity of an Plaintiff's expert witness. Plaintiff's expert witness designation reserved the right to designate further experts prior to trial.

Defendant objects to Plaintiff's expert disclosure as untimely and seeks to preclude Plaintiff from introducing the expert witnesses' testimony at trial. In opposition to the Motion, Plaintiff states that as a result of the May 2021 Order, he "understood and believed that the Court intended to continue all dates previously scheduled in connection with the trial"—including the deadline to disclose expert witnesses. Opposition [Doc. No. 80] at ¶ 5. Plaintiff asserts that Defendant's true motivation for the Motion is to bar the introduction of the proposed testimony of Plaintiff's expert, rather than the timing of the disclosure.

In reply, Defendant argues that Plaintiff's untimely expert disclosure was a calculated tactic which backfired.

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**CONT... Steve Lewis**

**Chapter 7**

**II. Findings of Fact and Conclusions of Law**

**A. Evidentiary Rulings**

Plaintiff attached the expert report of Plaintiff's proposed expert witness to Plaintiff's opposition. Defendant objects to Plaintiff's attempt to introduce the expert report.

Defendant's objection is **SUSTAINED**. The issue posed by the Motion is the timeliness of Plaintiff's expert disclosure, not the contents of the expert's proposed testimony. The expert's proposed testimony is not relevant to the issue at hand and is not considered by the Court.

**B. The Motion is Granted**

Civil Rule 16(b)(4) provides that a scheduling order "may be modified only for good cause and with the judge's consent." "Rule 16(b)'s good cause' standard primarily considers the diligence of the party seeking the amendment. The district court may modify the pretrial schedule 'if it cannot reasonably be met despite the diligence of the party seeking the extension.'" *Johnson v. Mammoth Recreations, Inc.*, 975 F.2d 604, 609 (9th Cir. 1992) (internal citations omitted).

The Court's decision not to extend the discovery cutoff and other litigation deadlines in the May 2021 Order was deliberate, not inadvertent. In the Court's experience, maintaining litigation deadlines often proves an effective means of facilitating settlement. In issuing the May 2021 Order, it was the Court's intent that mediation take place after discovery had been substantially completed, so that the parties would enter mediation with a complete understanding of the exposure they faced in the litigation. It was for this reason that the Court continued the Pretrial Conference and trial dates but did not continue the remaining litigation deadlines.

In view of his uncertainty regarding the scope of the May 2021 Order, the proper course for Plaintiff would have been to (1) seek clarification from the Court or (2) enter into a stipulation with Defendant regarding the expert disclosure deadline.

On the facts presented here, the Court cannot find that Plaintiff has shown "good cause" within the meaning of *Johnson v. Mammoth Recreations* for an extension of the expert witness disclosure deadline. Plaintiff's failure to meet the deadline resulted from his mistaken assumptions regarding what he believed that the Court "intended" to state in the May 2021 Order. But Plaintiff did not take any action to insure that his beliefs regarding the Court's intent were accurate, and as a result based his trial strategy on suppositions regarding the Court's intent that were mistaken. Reliance upon mistaken suppositions does not constitute "good cause" for modification of a

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**CONT... Steve Lewis**

**Chapter 7**

Scheduling Order. Therefore, Defendant's motion to exclude Plaintiff from introducing the testimony of Plaintiff's proposed expert is **GRANTED**.

**III. Conclusion**

Based upon the foregoing, the Motion is **GRANTED**. Within seven days of the hearing, Defendant shall submit an order incorporating this tentative ruling by reference.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Landon Foody or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Steve Lewis

Represented By  
Allan D Sarver

**Defendant(s):**

STEVE LEWIS

Represented By  
Allan D Sarver

**Plaintiff(s):**

LANGLOIS FAMILY LAW APC

Represented By  
Ray B Bowen Jr

**Trustee(s):**

Elissa Miller (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
Los Angeles  
Judge Ernest Robles, Presiding  
Courtroom 1568 Calendar**

**Wednesday, September 1, 2021**

**Hearing Room 1568**

11:00 AM

**2:20-10264 450 S. Western, LLC, a California limited liabilit**

**Chapter 11**

**#108.00** Hearing re [434] Objection to Claim #2 by Claimant David S. Kim & Associates.  
in the amount of \$ 225,778.87

Docket 0

**\*\*\* VACATED \*\*\* REASON: CONTINUED 9-22-21 AT 11:00 A.M.**

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

450 S. Western, LLC, a California

Represented By

Aram Ordubegian

Christopher K.S. Wong

M Douglas Flahaut

Amelia Puertas-Samara

Dylan J Yamamoto



**United States Bankruptcy Court  
Central District of California  
Los Angeles  
Judge Ernest Robles, Presiding  
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**Wednesday, September 1, 2021**

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11:00 AM

**2:20-10264 450 S. Western, LLC, a California limited liability**

**Chapter 11**

**#109.00** Hearing re [435] Objection to Claim #6 by Claimant SoCal Lien Solutions, LLC.  
in the amount of \$ 22,208.00

Docket 0

**Tentative Ruling:**

8/31/2021

**Note: Parties may appear at the hearing either in-person or by telephone. Parties electing to appear in-person shall comply with all requirements regarding social distancing, use of face masks, etc. which may be in effect at the time of the hearing. Parties electing to appear by telephone should contact CourtCall at 888-882-6878 no later than one hour before the hearing.**

For the reasons set forth below, the Claim Objection is **SUSTAINED** and Claim 6 is **DISALLOWED** in its entirety.

**Pleadings Filed and Reviewed:**

- 1) Omnibus Motion for an Order Disallowing: (1) Proof of Claim No. 2-1 Filed by David S. Kim & Associates; (2) Proof of Claim No. 6-1 Filed by SoCal Lien Solutions, LLC; and (3) Proof of Claim No. 17-2 Filed by Evergreen Capital Assets LP for Lack of Supporting Documents [Doc. No. 401] (the "Claim Objection")
  - a) Notice of Objection to Claim [Doc. No. 435]
- 2) No opposition to the Claim Objection is on file

**I. Facts and Summary of Pleadings**

**A. Background**

On January 10, 2020 (the "Petition Date"), 450 S. Western, LLC (the "Debtor") filed a voluntary Chapter 11 petition. As of the Petition Date, the Debtor owned and operated a three-story, 80,316 square foot shopping center—commonly known as California Marketplace—located at the intersection of South Western Avenue and 5th Street (the "Property").

On October 23, 2020, the Court entered an order authorizing the sale of the

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**CONT... 450 S. Western, LLC, a California limited liability Chapter 11**

Property to Sharp Capital for the purchase price of \$57.5 million. *See* Doc. No. 241 (the “Sale Order”). The sale closed on December 8, 2020. *See* Notice of Closing of Real Property [Doc. No. 257].

On April 26, 2021, the Court entered an order confirming the Debtor’s *First Amended Chapter 11 Plan of Liquidation, Dated February 26, 2021* (the “Plan”). *See* Doc. No. 354 (the “Confirmation Order”). The Plan provides for the creation of a Liquidating Trust to wind up the Debtor’s affairs, liquidate remaining assets, and pay creditors.

Prior to confirmation of the Plan, the Debtor paid secured creditors \$44,644,756 from the sale proceeds of the Property. **[Note 1]** On April 30, 2021, the Debtor transferred \$9,518,289.54 to the Liquidating Trust Account. *See* Doc. No. 359. As set forth in a Post-Confirmation Report filed on July 20, 2021, the Liquidating Trustee anticipates being able to distribute approximately \$8.5 million to general unsecured creditors. *See* Doc. No. 380. To date, no distributions to general unsecured creditors have been made.

**B. Claim No. 6-1, Asserted by SoCal Lien Solutions, LLC**

SoCal Lien Solutions, LLC (“SoCal”) asserts an unsecured claim in the amount of \$22,208 for “civil money judgment; services rendered.” *See* Proof of Claim No. 6-1 (“Claim 6”). SoCal did not attach to its claim an itemization of the services rendered or a copy of the civil judgment at issue.

**C. The Liquidating Trustee’s Claim Objection**

The Liquidating Trustee objects to Claim 6 as unenforceable based upon a lack of documentation to establish the validity of the claim and the amount owed. (By separate orders, the court has continued the hearings on the Liquidating Trustee’s objections to the other claims at issue in this Omnibus Claim Objection.)

SoCal has not filed an opposition to the Claim Objection.

**II. Findings of Fact and Conclusions of Law**

Under Bankruptcy Rule 3001(f), a proof of claim executed and filed in accordance with the Bankruptcy Rules constitutes *prima facie* evidence of the validity and amount of the claim. To overcome the presumption of validity created by a timely-filed proof of claim, an objecting party must do one of the following: (1) object based on legal grounds and provide a memorandum of points and authorities setting forth the legal basis for the objection; or (2) object based on a factual ground and provide sufficient

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**CONT... 450 S. Western, LLC, a California limited liability Chapter 11**

evidence (usually in the form of declarations under penalty of perjury) to create triable issues of fact. *Durkin v. Benedor Corp. (In re G.I. Indus., Inc.)*, 204 F.3d 1276, 1280 (9th Cir. BAP 2000); *United States v. Offord Finance, Inc. (In re Medina)*, 205 B.R. 216, 222 (9th Cir. BAP 1996); *Hemingway Transport, Inc. v. Kahn (In re Hemingway Transport, Inc.)*, 993 F.2d 915, 925 (1st Cir. 1993). Upon objection, a proof of claim provides "some evidence as to its validity and amount" and is "strong enough to carry over a mere formal objection without more." See *Lundell v. Anchor Constr. Spec., Inc.*, 223 F.3d 1035, 1039 (9th Cir. 2000) (citing *Wright v. Holm (In re Holm)*, 931 F.2d 620, 623 (9th Cir. 1991)). An objecting party bears the burden and must "show facts tending to defeat the claim by probative force equal to that of the allegations of the proofs of claim themselves." *Holm*, 931 F.2d at 623. When the objector has shown enough evidence to negate one or more facts in the proof of claim, the burden shifts back to the claimant to prove the validity of the claim by a preponderance of evidence. See *Lundell*, 223 F.3d at 1039 (citation omitted).

Here, Claim 6 is not entitled to *prima facie* validity because it does not contain the facts necessary to support the claim and it is not accompanied by all necessary supporting documents. SoCal has not specified the "civil money judgment" at issue or described the nature of the "services rendered." No supporting documentation has been attached to the claim.

Upon receipt of the Claim Objection, SoCal had the opportunity to present information supporting the validity of its claim, but failed to do so. SoCal has failed to establish the validity of its claim by a preponderance of the evidence. Accordingly, the Claim Objection is **SUSTAINED** and Claim 6 is **DISALLOWED** in its entirety.

Within seven days of the hearing, the Liquidating Trustee shall submit an order incorporating this tentative ruling by reference.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Landon Foody or Daniel Koontz, the Judge's Law Clerks, at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

**Note 1**

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**CONT... 450 S. Western, LLC, a California limited liability Chapter 11**

The payments were as follows: (1) G 450 LLC was paid \$28,785,842; (2) Pontis Capital, LLC was paid \$5,102,515; (3) Five West Capital, LP was paid \$6,382,944; (4) Evergreen Capital Assets, LP was paid \$1,384,967; (5) New Creation Engineering and Builders, Inc. was paid \$551,311; and (6) the Los Angeles County Treasurer and Tax Collector was paid \$2,437,177.

<b>Party Information</b>
--------------------------

**Debtor(s):**

450 S. Western, LLC, a California

Represented By  
Aram Ordubegian  
Christopher K.S. Wong  
M Douglas Flahaut  
Amelia Puertas-Samara  
Dylan J Yamamoto

**United States Bankruptcy Court  
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**Wednesday, September 1, 2021**

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11:00 AM

**2:20-10264 450 S. Western, LLC, a California limited liabilit**

**Chapter 11**

**#110.00** Hearing re [436] Objection to Claim #17 by Claimant Evergreen Capital Assets LP. in the amount of \$ 1,306,037.35.

Docket 0

**\*\*\* VACATED \*\*\* REASON: CONTINUED 10-6-2021 AT 11:00 AM**

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
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**Debtor(s):**

450 S. Western, LLC, a California

Represented By

Aram Ordubegian

Christopher K.S. Wong

M Douglas Flahaut

Amelia Puertas-Samara

Dylan J Yamamoto

**United States Bankruptcy Court  
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Los Angeles  
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**Wednesday, September 1, 2021**

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11:00 AM

**2:20-10264 450 S. Western, LLC, a California limited liabilit**

**Chapter 11**

**#111.00** Hearing  
RE: [383] Motion to Disallow the Claim of Hyun Soon Rhee

Docket 383

**\*\*\* VACATED \*\*\* REASON: CONTINUED 11-3-21 AT 11:00 AM**

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

450 S. Western, LLC, a California

Represented By  
Aram Ordubegian  
Christopher K.S. Wong  
M Douglas Flahaut  
Amelia Puertas-Samara  
Dylan J Yamamoto

**United States Bankruptcy Court  
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Los Angeles  
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11:00 AM

**2:20-10264 450 S. Western, LLC, a California limited liabilit**

**Chapter 11**

**#112.00** Hearing

RE: [401] Motion to Disallow Claims -- Omnibus Motion for an Order Disallowing:  
(1) Proof of Claim No. 2-1 Proof of Claim No. 6-1 Proof of Claim No. 17-2

Docket 401

**\*\*\* VACATED \*\*\* REASON: DUPLICATE OF CALENDAR NO. 109**

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

450 S. Western, LLC, a California

Represented By

Aram Ordubegian

Christopher K.S. Wong

M Douglas Flahaut

Amelia Puertas-Samara

Dylan J Yamamoto

**United States Bankruptcy Court  
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**2:20-10264 450 S. Western, LLC, a California limited liability**

**Chapter 11**

**#113.00** HearingRE: [408] Motion to Disallow Claims -- Motion to Disallow the Claim of Eunice Y. Tak, Filed as Proof of Claim No. 12-1; Memorandum of Points and Authorities and Declarations of Dylan J. Yamamoto and Joshua Park in Support Thereof, with Proof of Service

Docket 408

**Tentative Ruling:**

8/31/2021

**Note: Parties may appear at the hearing either in-person or by telephone. Parties electing to appear in-person shall comply with all requirements regarding social distancing, use of face masks, etc. which may be in effect at the time of the hearing. Parties electing to appear by telephone should contact CourtCall at 888-882-6878 no later than one hour before the hearing.**

For the reasons set forth below, the Claim Objection is **SUSTAINED IN PART** and **DENIED IN PART**. To the extent Claim 12 seeks recovery on behalf of a putative class of those allegedly employed by the Debtor, the Claim Objection is **SUSTAINED** and Claim 12 is **DISALLOWED**. To the extent Claim 12 seeks recovery for Eunice Tak on account of the Debtor's alleged violations of California wage and hour law during the time Tak was allegedly employed by the Debtor, a trial at which live witness testimony will be taken is required to adjudicate the validity of the claim.

**Pleadings Filed and Reviewed:**

- 1) Motion to Disallow the Claim of Eunice Y. Tak, Filed as Proof of Claim No. 12-1 [Doc. No. 408]
  - a) Notice of Objection to Claim [Doc. No. 409]
- 2) Claimant Eunice Y. Tak's Opposition in Response to Debtor 450 S. Western, LLC's Motion to Disallow the Claim of Eunice Y. Tak, Filed as Proof of Claim No. 12-1 [Doc. No. 462]
- 3) Reply to Eunice Y. Tak's Opposition to Motion to Disallow the Claim of Eunice Y. Tak, Filed as Proof of Claim No. 12-1



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**CONT... 450 S. Western, LLC, a California limited liability**

**Chapter 11**

- a) Evidentiary Objections to the Declaration of Eunice Y. Tak in Support of Eunice Y. Tak's Opposition to Motion to Disallow the Claim of Eunice Y. Tak, Filed as Proof of Claim No. 12-1

## **I. Facts and Summary of Pleadings**

### **A. Background**

On January 10, 2020 (the "Petition Date"), 450 S. Western, LLC (the "Debtor") filed a voluntary Chapter 11 petition. As of the Petition Date, the Debtor owned and operated a three-story, 80,316 square foot shopping center—commonly known as California Marketplace—located at the intersection of South Western Avenue and 5th Street (the "Property").

On October 23, 2020, the Court entered an order authorizing the sale of the Property to Sharp Capital for the purchase price of \$57.5 million. *See* Doc. No. 241 (the "Sale Order"). The sale closed on December 8, 2020. *See* Notice of Closing of Real Property [Doc. No. 257].

On April 26, 2021, the Court entered an order confirming the Debtor's *First Amended Chapter 11 Plan of Liquidation, Dated February 26, 2021* (the "Plan"). *See* Doc. No. 354 (the "Confirmation Order"). The Plan provides for the creation of a Liquidating Trust to wind up the Debtor's affairs, liquidate remaining assets, and pay creditors.

Prior to confirmation of the Plan, the Debtor paid secured creditors \$44,644,756 from the sale proceeds of the Property. [Note 1] On April 30, 2021, the Debtor transferred \$9,518,289.54 to the Liquidating Trust Account. *See* Doc. No. 359. As set forth in a Post-Confirmation Report filed on July 20, 2021, the Liquidating Trustee anticipates being able to distribute approximately \$8.5 million to general unsecured creditors. *See* Doc. No. 380. To date, no distributions to general unsecured creditors have been made.

### **B. Claim No. 12-1, Asserted by Eunice Y. Tak**

Eunice Y. Tak ("Tak") asserts a class proof of claim in the amount of \$1,000,000. *See* Proof of Claim No. 12-1 ("Claim 12"). Tak alleges that she was employed by the Debtor, and that the Debtor failed to pay her overtime wages and committed other wage and hour violations. The purported class consists of Tak and all others employed by the Debtor subsequent to April 15, 2015. Tak testifies that she is "informed and believe[s] that an estimated number of the class exceeds 100 employees." Tak Decl. [Doc. No. 462] at ¶ 5.

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**Wednesday, September 1, 2021**

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**CONT... 450 S. Western, LLC, a California limited liability**

**Chapter 11**

Prior to the Petition Date, Tak filed an action in the Los Angeles Superior Court against the Debtor, Gaju Market Corporation, and Hyun Soon Rhee (the “State Court Action”). Claim 12 is based upon the allegations set forth in the State Court Action. The State Court did not certify the putative class set forth in the State Court Action before the action was stayed by the filing of the petition.

**C. Summary of Papers Filed in Connection with the Claim Objection**

The Liquidating Trustee objects to Claim 12 on the ground that Tak has failed to submit sufficient evidence to support the validity of her claim. The Liquidating Trustee submits a declaration from Joshua Park, the Debtor’s Chief Financial Officer, in which Park testifies that Tak was never employed by the Debtor.

Tak asserts that the State Court Complaint provides sufficient evidence of the validity of the claim. Citing California law pertaining to class certification, Tak argues that the Court should allow the claim as a class proof of claim.

In response, the Liquidating Trustee reiterates his contention that Tak has failed to submit sufficient evidence to corroborate Claim 12.

**II. Findings of Fact and Conclusions of Law**

**A. Evidentiary Rulings**

The Liquidating Trustee objects to Tak’s testimony that she “was jointly hired as a non-exempt employee by [the Debtor] and its affiliated business GAJU Market Corporation ... from November 2016 through July 2017,” on the ground that Tak’s employment status is a legal conclusion. The objection is **SUSTAINED**. Whether Tak was or was not employed by the Debtor is an issue of law that, if decided in Tak’s favor, would substantially bolster her ability to assert a claim under the Plan. It is not appropriate for a lay witness to proffer testimony as to a potentially dispositive legal issue.

The Liquidating Trustee also objects to Tak’s testimony that she is “informed and believes that an estimated number of the class, namely [employees] hired by the Debtor since April 15, 2015 to the present date, exceeds 100 employees.” The Liquidating Trustee contends that the testimony is speculative and lacks foundation.

The Court will allow the testimony, but accords it only minimal evidentiary weight. Tak has offered no foundation as to how she arrived at the belief that the putative class consists of 100 employees.

**B. The Court Has Jurisdiction to Adjudicate the Validity of Claim 12**

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Tak asserts that the Court lacks the ability to adjudicate the Claim Objection, because the State Court Action upon which Claim 12 is based involves non-party defendants and thus falls outside of the jurisdiction granted to the Court under 28 U.S.C. § 1334.

By filing Claim 12, Tak has submitted to the jurisdiction of the Court. *See Langenkamp v. Culp*, 498 U.S. 42, 44–45, 111 S. Ct. 330, 331, 112 L. Ed. 2d 343 (1990) ("In *Granfinanciera* we recognized that by filing a claim against a bankruptcy estate the creditor triggers the process of "allowance and disallowance of claims," thereby subjecting [herself] to the bankruptcy court's equitable power."). Tak's assertion that the Court lacks jurisdiction to adjudicate the Claim Objection is without merit.

**C. The Court Declines to Apply Class Certification to Claim 12**

Class certification is governed by Civil Rule 23. Bankruptcy Rule 7023 provides that Civil Rule 23 "applies in adversary proceedings." Under Bankruptcy Rule 9014(c), the Court has discretion to apply Bankruptcy Rule 7023 to the claims administration process. Courts have developed a three-factor framework to guide the exercise of this discretion:

- 1) whether the class was certified pre-petition;
- 2) whether the members of the putative class received notice of the bar date; and
- 3) whether class certification will adversely affect the administration of the estate.

*In re Chaparral Energy, Inc.*, 571 B.R. 642, 646 (Bankr. D. Del. 2017).

These factors were first articulated in *In re Musicland Holding Corp.*, 362 B.R. 644, 654 (Bankr. S.D.N.Y. 2007) and are commonly referred to as the "*Musicland* factors." "No one factor is dispositive; a factor may take on more or less importance in any given case." *Chaparral Energy*, 571 B.R. at 646.

Only if the Court determines that it is appropriate to apply Bankruptcy Rule 7023 to the claims administration process does the Court proceed to determine whether the requirements of Civil Rule 23 have been satisfied. As explained by the *Chaparral Energy* court:

Whether to permit a class action proof of claim is a matter of discretion. In exercising that discretion, a two-step analysis is performed. First, the court

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must decide whether it is beneficial to apply Bankruptcy Rule 7023, via Bankruptcy Rule 9014(c), to the claims administration process. Second, the court must determine whether the requirements of Federal Rule 23 have been satisfied, such that a class proof of claim may properly be filed.

*Id.* (internal citations omitted); *see also Gentry v. Siegel*, 668 F.3d 83, 93 (4th Cir. 2012) (“Civil Rule 23 factors do not become an issue until the bankruptcy court determines that Rule 7023 applies by granting a Rule 9014 motion. The issue on such a motion centers more directly on whether the benefits of applying Rule 7023 (and Civil Rule 23) are superior to the benefits of the standard bankruptcy claims procedures.”).

Careful consideration of the *Musicland* factors is necessary because “class certification may be ‘less desirable in bankruptcy than in ordinary civil litigation.’” *In re Ephedra Prod. Liab. Litig.*, 329 B.R. 1, 5 (S.D.N.Y. 2005). Consequently, “[e]ven class actions that were certified prior to the filing for bankruptcy may ... be disallowed.” *Id.*

In *In re First Alliance Mortgage Co.*, the District Court for the Central District of California stated that “class action devices ... are particularly appropriate” in bankruptcy proceedings, and that “the party opposing the use of class devices [bears] the burden.” *First All. Mortg. Co.*, 269 B.R. 428, 445 (C.D. Cal. 2001). In the eighteen years since it was published, no decision—either published or unpublished—has cited *First Alliance* for this proposition. [Note 2] More recent decisions within the Ninth Circuit have approached class proofs of claim in a manner inconsistent with the standard set forth in *First Alliance*.

For example, in *In re Aughney*, the court expunged a class proof of claim, reasoning that the “essential problem with a class proof of claim is that class action procedures often conflict with established bankruptcy procedures.” *Aughney*, No. 10-12666, 2011 WL 479010, at \*1 (Bankr. N.D. Cal. Feb. 4, 2011). The court held that “class claims can be allowed, especially where a class was certified before bankruptcy or principles of equity and simple justice militate in favor of a claim being pursued on behalf of a class,” but emphasized that a “prerequisite for allowance ... is that the proponent must seek and obtain a determination of the Bankruptcy Court that Rule 7023 of the Federal Rules of Bankruptcy Procedure be made applicable to the claims process.” *Id.* In *Westfall v. MII Liquidation Inc.*, the District Court upheld the Bankruptcy Court’s denial of class certification, explaining that “bankruptcy courts have broad discretion to allow or disallow such class claims.” *Westfall*, No. 06-

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CV-02343-BENNLS, 2007 WL 2700951, at \*4 (S.D. Cal. Sept. 11, 2007).

Courts outside the Ninth Circuit have also declined to follow *First Alliance*. Instead of placing the burden upon the party opposing class certification, the Fourth Circuit Court of Appeals held that it was appropriate for the Bankruptcy Court to weigh “the benefits and costs of class litigation against the efficiencies created by the bankruptcy claims resolution process.” *Gentry v. Siegel*, 668 F.3d 83, 92 (4th Cir. 2012). The Fourth Circuit found that “[e]ach bankruptcy case must be assessed on a case-by-case basis to determine whether allowing a class action to proceed would be superior to using the bankruptcy claims process.” *Gentry*, 668 F.3d at 93. *First Alliance*’s burden standard is also fundamentally inconsistent with the *Musicland* factors, which have been widely adopted.

The Court declines to follow *First Alliance* for the propositions that class actions are particularly appropriate in bankruptcy and that the party opposing a class proof of claim bears the burden of proof. In determining whether application of Civil Rule 23 to the claims administration process is warranted, the Court will apply the *Musicland* factors, keeping in mind that “[w]hether to permit a class action proof of claim is a matter of discretion.” *Chapparral Energy*, 571 B.R. at 646.

1. The Musicland Factors Do Not Support Applying Civil Rule 23 to the Claims Administration Process

As set forth below, the Court finds that the *Musicland* factors do not weigh in favor of applying Civil Rule 23 to the claims administration process.

(a) Factor One: Whether the Class Was Certified Prepetition

The putative class was not certified prepetition, so the first *Musicland* factors weighs against applying Civil Rule 23 to the claims administration process.

(b) Factor Two: Whether Putative Class Members Received Notice of the Claims Bar Date

Where putative class members have received actual notice of the claims bar date, the second factor weighs against applying Civil Rule 23 to the claims administration process. *Musicland*, 362 B.R. at 655. The reason is that such putative class members have an opportunity to share in the distribution from the debtors’ estate by filing a proof of claim. *Id.* By contrast, putative class members who did not receive actual

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notice of the claims bar date lack the ability to file a proof of claim. The filing of a class proof of claim vindicates the ability of such putative class members to assert a claim against the estate.

Here, there is no indication that the putative class members received actual notice of the claims bar date, so the second factor weighs in favor of applying Civil Rule 23 to the claims administration process. However, the Court accords minimal weight to the second factor, because Tak has failed to submit substantial evidence regarding the size of the putative class. The only evidence regarding class size before the Court are the allegations in the complaint and conclusory declarations by Tak and her counsel that they are "informed and believe" that the class consists of 100 employees. Without firm evidencing suggesting that the existence of a class of 100 employees is at least plausible, the fact that putative class members may not have been notified of the claims bar date does not significantly weigh in favor of applying class certification procedures to the claims administration process.

(c) Factor Three: Class Certification Will Adversely Affect the Administration of the Estate

In applying the third factor, courts consider whether class certification would delay or interfere with the debtor's ability to make distributions under a plan. For example, in *Musicland*, the court found that the third factor weighed against invoking Civil Rule 23 where the class certification motion was filed after the court had begun the confirmation hearing. *Musicland*, 362 B.R. at 656. The court reasoned that the late introduction of a significant claim would delay the debtor's ability to confirm a plan by creating unforeseen issues as to plan feasibility. *Id.* Applying the same logic, the court in *Chapparral Energy* held that certification would not interfere with the plan, because the debtors intended to proceed with confirmation and consummation of the plan notwithstanding an outstanding objection to the class proof of claim. *Chapparral Energy*, 571 B.R. at 648–49.

Here, providing Tak the opportunity to pursue class certification would significantly delay the Liquidating Trustee's ability to make distributions to other general unsecured creditors. As set forth in Section II.B.2., below, Tak has failed to present meaningful evidence in support of her contention that class certification is warranted, despite having had ample opportunity to do so. As explained below, applying class certification procedures to the claims administration process would require the Liquidating Trustee to hold in reserve funds on account of the putative



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class claim, which would in turn significantly prejudice other general unsecured creditors by delaying the distribution of the reserved funds.

(d) Conclusion Regarding Application of the *Musicland* Factors

Having considered the *Musicland* factors, the Court finds that application of Civil Rule 23 to the claims administration process is not warranted in this case. The first and third factors both weigh against the application of Civil Rule 23. The second factor weighs in favor of applying Civil Rule 23, but that factor is entitled to only minimal weight given the scant evidence submitted regarding the size of the putative class.

2. Even if the Application of Civil Rule 23 to the Claims Administration Process was Appropriate, Tak Has Failed to Demonstrate that Class Certification Under Civil Rule 23(a) is Warranted

Even if it were appropriate to apply Civil Rule 23 to the claims administration process (a finding the Court does not make), Tak has failed to demonstrate that class certification under Civil Rule 23(a) is warranted.

A party seeking class certification must first demonstrate that:

- 1) the class is so numerous that joinder of all members is impracticable,
- 2) there are questions of law or fact common to the class,
- 3) the claims or defenses of the representative parties are typical of the claims or defenses of the class, and
- 4) the representative parties will fairly and adequately protect the interests of the class.

Civil Rule 23(a).

These requirements are generally referred to as “numerosity,” “commonality,” “typicality,” and “adequacy.”

With respect to the application of Civil Rule 23, the Supreme Court has held:

Rule 23 does not set forth a mere pleading standard. A party seeking class certification must affirmatively demonstrate his compliance with the Rule—that is, he must be prepared to prove that there are *in fact* sufficiently numerous parties, common questions of law or fact, etc. We recognized in

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*Falcon* that “sometimes it may be necessary for the court to probe behind the pleadings before coming to rest on the certification question,” 457 U.S., at 160, 102 S.Ct. 2364, and that certification is proper only if “the trial court is satisfied, after a rigorous analysis, that the prerequisites of Rule 23(a) have been satisfied,” *id.*, at 161, 102 S.Ct. 2364; see *id.*, at 160, 102 S.Ct. 2364 (“[A]ctual, not presumed, conformance with Rule 23(a) remains ... indispensable”). Frequently that “rigorous analysis” will entail some overlap with the merits of the plaintiff’s underlying claim. That cannot be helped. “[T]he class determination generally involves considerations that are enmeshed in the factual and legal issues comprising the plaintiff’s cause of action.” *Falcon, supra*, at 160, 102 S.Ct. 2364 (quoting *Coopers & Lybrand v. Livesay*, 437 U.S. 463, 469, 98 S.Ct. 2454, 57 L.Ed.2d 351 (1978); some internal quotation marks omitted). Nor is there anything unusual about that consequence: The necessity of touching aspects of the merits in order to resolve preliminary matters, *e.g.*, jurisdiction and venue, is a familiar feature of litigation. See *Szabo v. Bridgeport Machines, Inc.*, 249 F.3d 672, 676–677 (C.A.7 2001) (Easterbrook, J.).

*Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 350–52, 131 S. Ct. 2541, 2551–52, 180 L. Ed. 2d 374 (2011).

The only evidence Tak has submitted in support of class certification is (1) the State Court Complaint; (2) Tak’s testimony that she is “informed and believes that an estimated number of the class, namely [employees hired by the Debtor since April 15, 2015 to the present date, exceeds 100 employees,” Tak Decl. [Doc. No. 462] at ¶ 4; and (3) the testimony of Tak’s counsel that the putative class consists of 100 employees. Tak offers no explanation whatsoever as to how she arrived at her estimate of the number of employees in the putative class. The declaration of Tak’s counsel is likewise devoid of any such explanation.

Applying the “rigorous analysis” that is a pre-requisite to class certification, the Court finds that Tak has failed to “affirmatively demonstrate” her compliance with Rule 23. *Wal-Mart*, 564 U.S. at 350. Mere allegations in a complaint, coupled with a conclusory declaration as to the size of the class, fall far short of *Wal-Mart*’s requirement that Tak “be prepared to prove that there are *in fact* sufficiently numerous parties, common questions of law or fact, etc.” *Id.* Tak had the opportunity to submit meaningful evidence in support of class certification in connection with her opposition to the Claim Objection, which she failed to do. Alternatively, Tak could



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have filed a motion requesting that the Court apply Civil Rule 23 to the claims administration process and seeking class certification either at the time she filed her Proof of Claim or at some time thereafter. Tak did neither.

Providing Tak additional time to attempt to demonstrate the appropriateness of class certification would unduly delay the Liquidating Trustee's ability to make distributions under the Plan to other general unsecured creditors. In her individual capacity, Tak asserts a claim against the estate of \$306,000. On behalf of the putative class, Tak asserts a claim of \$1,000,000. Allowing Tak additional time to present evidence regarding class certification would prejudice other general unsecured creditors, because the Liquidating Trustee would be required to hold in reserve funds sufficient to satisfy the *pro rata* amount of the difference between the class proof of claim (\$1,000,000) and Tak's individual claim (\$306,000), leaving such funds unavailable for distribution. Because Tak has already had ample opportunity to present such evidence, the Court declines to prejudice the estate's other creditors by further delaying distribution.

**D. The Liquidating Trust's Liability to Tak Individually Cannot Be Determined Upon the Present Record**

Under Bankruptcy Rule 3001(f), a proof of claim executed and filed in accordance with the Bankruptcy Rules constitutes *prima facie* evidence of the validity and amount of the claim. To overcome the presumption of validity created by a timely-filed proof of claim, an objecting party must do one of the following: (1) object based on legal grounds and provide a memorandum of points and authorities setting forth the legal basis for the objection; or (2) object based on a factual ground and provide sufficient evidence (usually in the form of declarations under penalty of perjury) to create triable issues of fact. *Durkin v. Benedor Corp. (In re G.I. Indus., Inc.)*, 204 F.3d 1276, 1280 (9th Cir. BAP 2000); *United States v. Offord Finance, Inc. (In re Medina)*, 205 B.R. 216, 222 (9th Cir. BAP 1996); *Hemingway Transport, Inc. v. Kahn (In re Hemingway Transport, Inc.)*, 993 F.2d 915, 925 (1st Cir. 1993). Upon objection, a proof of claim provides "some evidence as to its validity and amount" and is "strong enough to carry over a mere formal objection without more." *See Lundell v. Anchor Constr. Spec., Inc.*, 223 F.3d 1035, 1039 (9th Cir. 2000) (citing *Wright v. Holm (In re Holm)*, 931 F.2d 620, 623 (9th Cir. 1991)). An objecting party bears the burden and must "show facts tending to defeat the claim by probative force equal to that of the allegations of the proofs of claim themselves." *Holm*, 931 F.2d at 623. When the objector has shown enough evidence to negate one or more facts in the proof of claim, the burden shifts

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back to the claimant to prove the validity of the claim by a preponderance of evidence. *See Lundell*, 223 F.3d at 1039 (citation omitted).

The Court finds that Tak has introduced sufficient evidence to establish the *prima facie* validity of her claim for \$306,000 on account of damages for alleged wage and hour violations during the time that Tak was allegedly employed by the Debtor. It is true that Tak has not submitted a written offer of employment, an employment contract, a pay stub, or any other written documentation evidencing her employment status. The Court also takes note of the declaration submitted by Joshua Park, the Debtor's Chief Financial Officer, which attests that Tak was never employed by the Debtor. However, the Court finds that the State Court Complaint, which alleges that Tak was employed by the Debtor, is sufficient to create a disputed issue of fact as to whether Tak was an employee.

Adjudicating the Claim Objection requires the Court to make findings with respect to a material factual disputes—namely, whether Tak was employed by the Debtor and if so, whether the Debtor violated California wage and hour law. This issue cannot be determined solely upon declaration testimony. A trial at which live witness testimony will be taken is required because the Court must assess the credibility of the witnesses. *See Khachikyan v. Hahn (In re Khachikyan)*, 335 B.R. 121, 125 (B.A.P. 9th Cir. 2005) (holding that where material facts are in dispute, testimony must be taken in the same manner as in an adversary proceeding).

The following dates shall apply with respect to the trial of the Claim Objection:

- 1) The last day to disclose expert witnesses and expert witness reports is **11/30/2021**.
- 2) The last day to disclose rebuttal expert witnesses and rebuttal expert witness reports is **12/30/2021**.
- 3) The last date to complete discovery, including discovery pertaining to expert witnesses, is **1/18/2022**. All discovery motions must also have been heard by this date. (For contemplated hearings on discovery motions, it is counsel's responsibility to check the Judge's self-calendaring dates, posted on the Court's website. If the discovery cutoff date falls on a date when the court is closed or that is not available for self-calendaring, the deadline for hearings on discovery motions is the next closest previous date which is available for self-calendaring.)
- 4) The last day for dispositive motions to be heard is **1/18/2022**. (If the motion cutoff date is not available for self-calendaring, the deadline for

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dispositive motions to be heard is the next closest previous date which is available for self-calendaring.)

- 5) A Pretrial Conference is set for **2/8/2022 at 11:00 a.m.** By no later than fourteen days prior to the Pretrial Conference, the parties must submit a Joint Pretrial Stipulation via the Court's Lodged Order Upload (LOU) system. Submission via LOU allows the Court to edit the Joint Pretrial Stipulation, if necessary. Parties should consult the Court Manual, section 4, for information about LOU.
- 6) In addition to the procedures set forth in Local Bankruptcy Rule 7016-1(b), the following procedures govern the conduct of the Pretrial Conference and the preparation of the Pretrial Stipulation:
  - a) By no later than thirty days prior to the Pretrial Conference, the parties must exchange copies of all exhibits which each party intends to introduce into evidence (other than exhibits to be used solely for impeachment or rebuttal).
  - b) When preparing the Pretrial Stipulation, all parties shall stipulate to the admissibility of exhibits whenever possible. In the event any party cannot stipulate to the admissibility of an exhibit, that party must file a Motion in Limine which clearly identifies each exhibit alleged to be inadmissible and/or prejudicial. The moving party must set the Motion in Limine for hearing at the same time as the Pretrial Conference; notice and service of the Motion shall be governed by LBR 9013-1. The Motion in Limine must contain a statement of the specific prejudice that will be suffered by the moving party if the Motion is not granted. The Motion must be supported by a memorandum of points and authorities containing citations to the applicable Federal Rules of Evidence, relevant caselaw, and other legal authority. Blanket or boilerplate evidentiary objections not accompanied by detailed supporting argument are prohibited, will be summarily overruled, and may subject the moving party to sanctions.
  - c) The failure of a party to file a Motion in Limine complying with the requirements of subparagraph (ii) shall be deemed a waiver of any objections to the admissibility of an exhibit.
  - d) Motions in Limine seeking to exclude testimony to be offered by any witness shall comply with the requirements set forth in subparagraph (ii), and shall be filed by the deadline specified in subparagraph (ii).

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The failure of a party to file a Motion in Limine shall be deemed a waiver of any objections to the admissibility of a witness's testimony.

- 7) Trial is set for the week of **2/28/2022**. The trial day commences at 9:00 a.m. The exact date of the trial will be set at the Pretrial Conference. Consult the Court's website for the Judge's requirements regarding exhibit binders and trial briefs.
- 8) This matter shall be referred to the Mediation Panel. The Debtor shall lodge a completed "Request for Assignment to Mediation Program; [Proposed] Order Thereon" (*see* Amended General Order 95-01 available on the Court's website) within 15 days from the date of this hearing, and deliver a hard copy directly to chambers c/o the judge's law clerk Daniel Koontz. The manner in which the mediation is conducted—whether in-person or by videoconference—shall be at the discretion of the mediator.

**E. Pending the Adjudication of Claim 12, the Liquidating Trustee Shall Hold in Reserve the Amount Tak Would Be Entitled to Receive in the Event the Claim is Allowed**

In the alternative to his request for disallowance of the claim in its entirety, the Liquidating Trustee asks that the Court estimate Claim 12 at \$0 for distribution purposes.

Under § 502(c), the Court is empowered to estimate "any contingent or unliquidated claim" for purposes of distribution, if the fixing or liquidation of such claim "would unduly delay the administration of the case."

The court "has wide discretion and latitude in estimating claims. Importantly, the principal consideration in estimating unliquidated claims must be an accommodation to the underlying purposes of the Bankruptcy Code." *In re N. Am. Health Care, Inc.*, 544 B.R. 684, 688 (Bankr. C.D. Cal. 2016) (internal citations omitted).

As a practical matter, estimating the claim at \$0 as requested by the Liquidating Trustee would bar Tak from receiving any distribution in the event that she succeeded in establishing her claim against the Liquidating Trust. Allowing the claims estimation procedure to effectively moot any possible recovery by Tak would not be consistent with the purposes of the Bankruptcy Code. Therefore, the Liquidating Trust's request that the claim be estimated at \$0 for distribution purposes is **DENIED**. The Liquidating Trust shall hold in reserve an amount sufficient to satisfy Tak's *pro rata* share of the Liquidating Trust's assets in the event her claim is allowed in the amount of \$306,000. Since under the Plan general unsecured creditors are projected to receive

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a distribution of between 15–30%, this does *not* mean that the Liquidating Trust is required to hold \$306,000 in reserve. Instead, the Liquidating Trust is required to reserve only the amount sufficient to satisfy Tak's *pro rata* share of estate assets in the event her claim is allowed in the amount of \$306,000.

### **III. Conclusion**

Based upon the foregoing, the Claim Objection is **SUSTAINED IN PART** and **DENIED IN PART**. To the extent Claim 12 seeks recovery on behalf of a putative class of those allegedly employed by the Debtor, the Claim Objection is **SUSTAINED** and Claim 12 is **DISALLOWED**. To the extent Claim 12 seeks recovery for Eunice Tak on account of the Debtor's alleged violations of California wage and hour law during the time Tak was allegedly employed by the Debtor, a trial at which live witness testimony will be taken is required to adjudicate the validity of the claim.

The Court will prepare and enter appropriate orders.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Landon Foody or Daniel Koontz, the Judge's Law Clerks, at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

#### **Note 1**

The payments were as follows: (1) G 450 LLC was paid \$28,785,842; (2) Pontis Capital, LLC was paid \$5,102,515; (3) Five West Capital, LP was paid \$6,382,944; (4) Evergreen Capital Assets, LP was paid \$1,384,967; (5) New Creation Engineering and Builders, Inc. was paid \$551,311; and (6) the Los Angeles County Treasurer and Tax Collector was paid \$2,437,177.

#### **Note 2**

Five published and six unpublished decisions have cited *First Alliance*. None of these eleven decisions cite *First Alliance* for the proposition that class actions are particularly appropriate in bankruptcy proceedings or that the party opposing the a class proof of claim bears the burden of proof.

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**Party Information**

**Debtor(s):**

450 S. Western, LLC, a California

Represented By

Aram Ordubegian

Christopher K.S. Wong

M Douglas Flahaut

Amelia Puertas-Samara

Dylan J Yamamoto

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**#114.00** HearingRE: [410] Motion to Disallow Claims -- Motion to Disallow the Claim of Square Mixx LA, Inc., Filed as Proof of Claim No. 11-1; Memorandum of Points and Authorities and Declarations of Dylan J. Yamamoto and Joshua Park in Support Thereof, with Proof of Service # 2 Exhibits (Part 2 of 3) # 3 Exhibits (Part 3 of 3) # 4 Proof of Service) (Yamamoto, Dylan)

Docket 410

**Tentative Ruling:**

8/31/2021

**Note: Parties may appear at the hearing either in-person or by telephone. Parties electing to appear in-person shall comply with all requirements regarding social distancing, use of face masks, etc. which may be in effect at the time of the hearing. Parties electing to appear by telephone should contact CourtCall at 888-882-6878 no later than one hour before the hearing.**

For the reasons set forth below, the Court finds that an evidentiary hearing is required to adjudicate the validity of Claim 11.

**Pleadings Filed and Reviewed:**

- 1) Motion to Disallow the Claim of Square Mixx LA, Inc., Filed as Proof of Claim No. 11-1 [Doc. No. 410]
  - a) Notice of Objection to Claim [Doc. No. 411]
- 2) Claimant Square Mixx, LA Inc.'s Opposition in Response to Debtor 450 S. Western, LLC's Motion to Disallow the Claim of Square Mixx LA, Inc., Filed as Proof of Claim No. 11-1 [Doc. No. 461]
- 3) Reply to Square Mixx, LA Inc.'s Opposition in Response to Debtor 450 S. Western, LLC's Motion to Disallow the Claim of Square Mixx LA, Inc., Filed as Proof of Claim No. 11-1 [Doc. No. 471]
  - a) Evidentiary Objections to the Declaration of John A. Gordon in Support of Square Mixx LA, Inc.'s Opposition to the Motion to Disallow the Claim of Square Mixx, LA, Inc., Filed as Proof of Claim No. 11-1 [Doc. No. 472]



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**Chapter 11**

**I. Facts and Summary of Pleadings**

**A. Background**

On January 10, 2020 (the “Petition Date”), 450 S. Western, LLC (the “Debtor”) filed a voluntary Chapter 11 petition. As of the Petition Date, the Debtor owned and operated a three-story, 80,316 square foot shopping center—commonly known as California Marketplace—located at the intersection of South Western Avenue and 5th Street (the “Property”).

On October 23, 2020, the Court entered an order authorizing the sale of the Property to Sharp Capital for the purchase price of \$57.5 million. *See* Doc. No. 241 (the “Sale Order”). The sale closed on December 8, 2020. *See* Notice of Closing of Real Property [Doc. No. 257].

On April 26, 2021, the Court entered an order confirming the Debtor’s *First Amended Chapter 11 Plan of Liquidation, Dated February 26, 2021* (the “Plan”). *See* Doc. No. 354 (the “Confirmation Order”). The Plan provides for the creation of a Liquidating Trust to wind up the Debtor’s affairs, liquidate remaining assets, and pay creditors.

Prior to confirmation of the Plan, the Debtor paid secured creditors \$44,644,756 from the sale proceeds of the Property. [Note 1] On April 30, 2021, the Debtor transferred \$9,518,289.54 to the Liquidating Trust Account. *See* Doc. No. 359. As set forth in a Post-Confirmation Report filed on July 20, 2021, the Liquidating Trustee anticipates being able to distribute approximately \$8.5 million to general unsecured creditors. *See* Doc. No. 380. To date, no distributions to general unsecured creditors have been made.

**B. Claim No. 11-1, Asserted by Square Mixx LA, Inc.**

Square Mixx LA, Inc. (“Square Mixx”) asserts a general unsecured claim in the amount of \$7,000,000. *See* Proof of Claim No. 11-1 (“Claim 11”). Square Mixx’s business consists of creating and operating food courts in urban areas specializing in Korean brands. On June 12, 2017, Square Mixx leased from the Debtor space to operate a food court consisting of six restaurants. The Debtor and Square Mixx executed a First Amendment to the lease on June 12, 2017, and executed a Second Amendment to the Lease on July 1, 2017 (the lease and its amendments collectively, the “Lease”). Square Mixx took possession of the premises in June 2017.

On June 22, 2018, Square Mixx filed a complaint against the Debtor and other entities in the Los Angeles Superior Court (the “State Court Action”). The State Court Action asserts claims for fraudulent inducement into the Lease, negligent



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misrepresentation, breach of the Lease, intentional and negligent interference with prospective economic relations, and unfair business practices.

In its claim, which is based upon the allegations set forth in the State Court Action, Square Mixx alleges that it sustained damages as a result of two misrepresentations made by the Debtor. First, Square Mixx alleges that before it executed the Lease, the Debtor falsely represented that it possessed a Conditional Use Permit (the "CUP") for the Property. The presence of a CUP was important to Square Mixx because a CUP was a pre-requisite for Square Mixx to obtain a license to serve alcoholic beverages, which Square Mixx was counting on to insure the food court's profitability. Second, Square Mixx alleges that the Debtor falsely represented that the common area immediately adjacent to the food court would be an entertainment zone hosting concerts, outdoor movies, and other events which would attract significant traffic to the food court.

In support of its claim, Square Mixx submits an expert report from John A. Gordon of Pacific Management Consulting Group (the "Gordon Report"). According to the Gordon Report, Square Mixx's inability to serve alcoholic beverages at the food court resulted in a discounted loss of profit of \$4,189,849 over the ten-year period of the Lease.

Square Mixx contends that but for the Debtor's alleged false representations regarding the CUP and the entertainment zone, it would not have entered into the Lease. In addition to the damages set forth in the Gordon Report, Square Mixx seeks damages of \$1,944,030.42, consisting of the amount it spent to design and build out the food court.

On August 6, 2018, the Debtor commenced an unlawful detainer action against Square Mixx for non-payment of rent. Subsequent to the filing of the unlawful detainer action, Square Mixx vacated the Property.

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**C. Summary of Papers Filed in Connection with the Claim Objection**

The Liquidating Trustee objects to Claim 11 on the ground that the State Court Action filed by Square Mixx lacks merit. In addition, the Liquidating Trustee asserts that Square Mixx breached the Lease by failing to pay rent.

Square Mixx asserts that its claim has been sufficiently established by the Gordon Report and the testimony of its president, Chris Yun. Yun testifies that Square Mixx spent \$1,944,030.42 to design and build out its food court in reliance upon the

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Debtor's representations regarding the entertainment zone and its ability to serve alcoholic beverages.

In Reply to Square Mixx's Opposition, the Liquidating Trustee argues that the Lease's integration clause bars Square Mixx from seeking any damages on account of any representations made by the Debtor regarding the entertainment zone or Square Mixx's ability to serve alcoholic beverages at the food court. The Liquidating Trustee also submits a supplemental declaration from Joshua Park, the Debtor's Chief Financial Officer. Park testifies that the Debtor made no misrepresentations to Square Mixx regarding an entertainment zone or its ability to serve alcoholic beverages at the Property.

In the alternative to his request for disallowance of the claim in its entirety, the Liquidating Trustee asks that the Court estimate Claim 11 for distribution purposes, so that the distribution to other creditors is not delayed. For purposes of estimation, the Liquidating Trustee contends that Square Mixx's damages should be offset by \$5.08 million, comprising the total amount of lost rent over the ten-year term of the Lease.

## **II. Findings of Fact and Conclusions of Law**

### **A. The Court Has Jurisdiction to Adjudicate the Validity of Claim 11**

Square Mixx asserts that the Court lacks the ability to adjudicate the Claim Objection because the Court lacks jurisdiction to determine the merits of the State Court Action upon which Claim 11 is based.

By filing Claim 11, Square Mixx has submitted to the jurisdiction of the Court. *See Langenkamp v. Culp*, 498 U.S. 42, 44–45, 111 S. Ct. 330, 331, 112 L. Ed. 2d 343 (1990) ("In *Granfinanciera* we recognized that by filing a claim against a bankruptcy estate the creditor triggers the process of "allowance and disallowance of claims," thereby subjecting [herself] to the bankruptcy court's equitable power."). Square Mixx's assertion that the Court lacks jurisdiction to adjudicate the Claim Objection is without merit.

### **B. An Evidentiary Hearing is Required to Adjudicate the Validity of Claim 11**

Under Bankruptcy Rule 3001(f), a proof of claim executed and filed in accordance with the Bankruptcy Rules constitutes *prima facie* evidence of the validity and amount of the claim. To overcome the presumption of validity created by a timely-filed proof of claim, an objecting party must do one of the following: (1) object based on legal grounds and provide a memorandum of points and authorities setting forth the legal basis for the objection; or (2) object based on a factual ground and provide sufficient

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evidence (usually in the form of declarations under penalty of perjury) to create triable issues of fact. *Durkin v. Benedor Corp. (In re G.I. Indus., Inc.)*, 204 F.3d 1276, 1280 (9th Cir. BAP 2000); *United States v. Offord Finance, Inc. (In re Medina)*, 205 B.R. 216, 222 (9th Cir. BAP 1996); *Hemingway Transport, Inc. v. Kahn (In re Hemingway Transport, Inc.)*, 993 F.2d 915, 925 (1st Cir. 1993). Upon objection, a proof of claim provides "some evidence as to its validity and amount" and is "strong enough to carry over a mere formal objection without more." *See Lundell v. Anchor Constr. Spec., Inc.*, 223 F.3d 1035, 1039 (9th Cir. 2000) (citing *Wright v. Holm (In re Holm)*, 931 F.2d 620, 623 (9th Cir. 1991)). An objecting party bears the burden and must "show facts tending to defeat the claim by probative force equal to that of the allegations of the proofs of claim themselves." *Holm*, 931 F.2d at 623. When the objector has shown enough evidence to negate one or more facts in the proof of claim, the burden shifts back to the claimant to prove the validity of the claim by a preponderance of evidence. *See Lundell*, 223 F.3d at 1039 (citation omitted).

Through the State Court Complaint and the Gordon Report, Square Mixx has introduced sufficient evidence to establish the *prima facie* validity of its claim. Adjudicating the Claim Objection requires the Court to make findings with respect to material factual disputes—including, without limitation, whether the Debtor represented to Square Mixx (1) that Square Mixx would have the ability to obtain a license to serve alcoholic beverages and/or (2) that the area near the food court would be used as an entertainment zone that would attract substantial customer traffic to the food court. An evidentiary hearing at which witness testimony will be taken is necessary to enable the Court to assess the credibility of the witnesses. *See Khachikyan v. Hahn (In re Khachikyan)*, 335 B.R. 121, 125 (B.A.P. 9th Cir. 2005) (holding that where material facts are in dispute, testimony must be taken in the same manner as in an adversary proceeding).

The following dates shall apply with respect to the trial of the Claim Objection:

- 1) The last day to disclose expert witnesses and expert witness reports is **11/30/2021**.
- 2) The last day to disclose rebuttal expert witnesses and rebuttal expert witness reports is **12/30/2021**.
- 3) The last date to complete discovery, including discovery pertaining to expert witnesses, is **1/18/2022**. All discovery motions must also have been heard by this date. (For contemplated hearings on discovery motions, it is counsel's responsibility to check the Judge's self-calendaring dates, posted

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on the Court's website. If the discovery cutoff date falls on a date when the court is closed or that is not available for self-calendaring, the deadline for hearings on discovery motions is the next closest previous date which is available for self-calendaring.)

- 4) The last day for dispositive motions to be heard is **1/18/2022**. (If the motion cutoff date is not available for self-calendaring, the deadline for dispositive motions to be heard is the next closest previous date which is available for self-calendaring.)
- 5) A Pretrial Conference is set for **2/8/2022 at 11:00 a.m.** By no later than fourteen days prior to the Pretrial Conference, the parties must submit a Joint Pretrial Stipulation via the Court's Lodged Order Upload (LOU) system. Submission via LOU allows the Court to edit the Joint Pretrial Stipulation, if necessary. Parties should consult the Court Manual, section 4, for information about LOU.
- 6) In addition to the procedures set forth in Local Bankruptcy Rule 7016-1(b), the following procedures govern the conduct of the Pretrial Conference and the preparation of the Pretrial Stipulation:
  - a) By no later than thirty days prior to the Pretrial Conference, the parties must exchange copies of all exhibits which each party intends to introduce into evidence (other than exhibits to be used solely for impeachment or rebuttal).
  - b) When preparing the Pretrial Stipulation, all parties shall stipulate to the admissibility of exhibits whenever possible. In the event any party cannot stipulate to the admissibility of an exhibit, that party must file a Motion in Limine which clearly identifies each exhibit alleged to be inadmissible and/or prejudicial. The moving party must set the Motion in Limine for hearing at the same time as the Pretrial Conference; notice and service of the Motion shall be governed by LBR 9013-1. The Motion in Limine must contain a statement of the specific prejudice that will be suffered by the moving party if the Motion is not granted. The Motion must be supported by a memorandum of points and authorities containing citations to the applicable Federal Rules of Evidence, relevant caselaw, and other legal authority. Blanket or boilerplate evidentiary objections not accompanied by detailed supporting argument are prohibited, will be summarily overruled, and may subject the moving party to sanctions.

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- c) The failure of a party to file a Motion in Limine complying with the requirements of subparagraph (ii) shall be deemed a waiver of any objections to the admissibility of an exhibit.
- d) Motions in Limine seeking to exclude testimony to be offered by any witness shall comply with the requirements set forth in subparagraph (ii), and shall be filed by the deadline specified in subparagraph (ii). The failure of a party to file a Motion in Limine shall be deemed a waiver of any objections to the admissibility of a witness's testimony.
- 7) Trial is set for the week of **2/28/2022**. The trial day commences at 9:00 a.m. The exact date of the trial will be set at the Pretrial Conference. Consult the Court's website for the Judge's requirements regarding exhibit binders and trial briefs.
- 8) This matter shall be referred to the Mediation Panel. The Liquidating Trustee shall lodge a completed "Request for Assignment to Mediation Program; [Proposed] Order Thereon" (*see* Amended General Order 95-01 available on the Court's website) within 15 days from the date of this hearing, and deliver a hard copy directly to chambers c/o the judge's law clerk Daniel Koontz. The manner in which the mediation is conducted—whether in-person or by videoconference—shall be at the discretion of the mediator.

**C. Pending the Adjudication of Claim 11, the Liquidating Trustee Shall Hold in Reserve the Amount Square Mixx Would Be Entitled to Receive If Its Claim is Allowed in the Amount of \$1,944,030.42**

In the alternative to his request for disallowance of the claim in its entirety, the Liquidating Trustee asks that the Court estimate Claim 11 at \$0 for distribution purposes. To the extent the Court is unwilling to estimate Claim 11 at \$0, the Liquidating Trust requests that the claim be estimated at no more than \$1.05 million. (The Liquidating Trustee derives this figure by offsetting the amount of alleged foregone rent against Square Mixx's claim.)

Under § 502(c), the Court is empowered to estimate "any contingent or unliquidated claim" for purposes of distribution, if the fixing or liquidation of such claim "would unduly delay the administration of the case."

The court "has wide discretion and latitude in estimating claims. Importantly, the principal consideration in estimating unliquidated claims must be an accommodation to the underlying purposes of the Bankruptcy Code." *In re N. Am. Health Care, Inc.*,

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544 B.R. 684, 688 (Bankr. C.D. Cal. 2016) (internal citations omitted).

As a practical matter, estimating the claim at \$0 as requested by the Liquidating Trustee would bar Square Mixx from receiving any distribution in the event that it succeeds in establishing its claim against the Liquidating Trust. Allowing the claims estimation procedure to effectively moot any possible recovery by Square Mixx would not be consistent with the purposes of the Bankruptcy Code. On the other hand, estimating the claim at \$7 million (the amount advocated by Square Mixx) for would prejudice other general unsecured creditors by delaying the distribution of a substantial portion of the Liquidating Trust's assets.

The portion of Square Mixx's claim attributable to damages for future lost profits is inherently more speculative than the portion of the claim based on the actual costs expended by Square Mixx to design and build-out the food court. Any claim for future lost profits requires the prediction of an inherently uncertain future. Square Mixx's claim is a case in point: at the time the Gordon Report was prepared in November 2019, few could have predicted that 2020 restaurant sales would be materially affected by a devastating global pandemic.

For purposes of distribution, the Court will require the Liquidating Trustee to hold in reserve only an amount necessary to satisfy the more concrete portion of Square Mixx's claim—namely, the \$1,944,030.42 that Square Mixx asserts that it spent to design and build out the food court. Since under the Plan general unsecured creditors are projected to receive a distribution of between 15–30%, this does *not* mean that the Liquidating Trust is required to hold the entire \$1,944,030.42 in reserve. Instead, the Liquidating Trust is required to reserve only the amount sufficient to satisfy Square Mixx's *pro rata* share of the Liquidating Trust's assets in the event that its claim is ultimately allowed in the amount of \$1,944,030.42.

### **III. Conclusion**

Based upon the foregoing, the Court finds that an evidentiary hearing is required to adjudicate the allowability of Claim 11. The Court will enter a Scheduling Order establishing the litigation deadlines pertaining to the evidentiary hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Landon Foody or Daniel Koontz, the Judge's Law Clerks, at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear

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at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

**Note 1**

The payments were as follows: (1) G 450 LLC was paid \$28,785,842; (2) Pontis Capital, LLC was paid \$5,102,515; (3) Five West Capital, LP was paid \$6,382,944; (4) Evergreen Capital Assets, LP was paid \$1,384,967; (5) New Creation Engineering and Builders, Inc. was paid \$551,311; and (6) the Los Angeles County Treasurer and Tax Collector was paid \$2,437,177.

<b>Party Information</b>
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**Debtor(s):**

450 S. Western, LLC, a California

Represented By

Aram Ordubegian

Christopher K.S. Wong

M Douglas Flahaut

Amelia Puertas-Samara

Dylan J Yamamoto



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**#115.00** Hearing  
RE:[412] Motion to Disallow the Claim of Sino-US Investment and Management Consulting Ltd Filed as Proof of Claim No. 3-1;

Docket 383

**Tentative Ruling:**

8/31/2021

**Note: Parties may appear at the hearing either in-person or by telephone. Parties electing to appear in-person shall comply with all requirements regarding social distancing, use of face masks, etc. which may be in effect at the time of the hearing. Parties electing to appear by telephone should contact CourtCall at 888-882-6878 no later than one hour before the hearing.**

For the reasons set forth below, to the extent the Liquidating Trustee seeks disallowance of Claim 3 based on Sino-US's failure to register as a broker-dealer, the Claim Objection is **DENIED**. To the extent the Liquidating Trustee seeks disallowance of Claim 3 based upon the non-disclosure of Sino-US's commissions, the present record is insufficient to adjudicate the Claim Objection, and the Court will set this aspect of the Claim Objection for trial.

**Pleadings Filed and Reviewed:**

- 1) Motion to Disallow the Claim of Sino-US Investment and Management Consulting Ltd. Filed as Proof of Claim No. 3-1 [Doc. No. 412] (the "Claim Objection")
  - a) Notice of Objection to Claim [Doc. No. 413]
- 2) Claimant Sino-US Investment and Management Consultant Limited's Opposition to Motion to Disallow Claim (Proof of Claim No. 3-1) [Doc. No. 463] (the "Opposition")
- 3) Reply Re: Motion to Disallow the Claim of Sino-US Investment and Management Consulting Ltd. Filed as Proof of Claim No. 3-1 [Doc. No. 473] (the "Reply")

**I. Facts and Summary of Pleadings**



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**A. Background**

On January 10, 2020 (the “Petition Date”), 450 S. Western, LLC (the “Debtor”) filed a voluntary Chapter 11 petition. As of the Petition Date, the Debtor owned and operated a three-story, 80,316 square foot shopping center—commonly known as California Marketplace—located at the intersection of South Western Avenue and 5th Street (the “Property”).

On October 23, 2020, the Court entered an order authorizing the sale of the Property to Sharp Capital for the purchase price of \$57.5 million. *See* Doc. No. 241 (the “Sale Order”). The sale closed on December 8, 2020. *See* Notice of Closing of Real Property [Doc. No. 257].

On April 26, 2021, the Court entered an order confirming the Debtor’s *First Amended Chapter 11 Plan of Liquidation, Dated February 26, 2021* (the “Plan”). *See* Doc. No. 354 (the “Confirmation Order”). The Plan provides for the creation of a Liquidating Trust to wind up the Debtor’s affairs, liquidate remaining assets, and pay creditors.

Prior to confirmation of the Plan, the Debtor paid secured creditors \$44,644,756 from the sale proceeds of the Property. [**Note 1**] On April 30, 2021, the Debtor transferred \$9,518,289.54 to the Liquidating Trust Account. *See* Doc. No. 359. As set forth in a Post-Confirmation Report filed on July 20, 2021, the Liquidating Trustee anticipates being able to distribute approximately \$8.5 million to general unsecured creditors. *See* Doc. No. 380. To date, no distributions to general unsecured creditors have been made.

**B. Claim No. 3-1, Asserted by Sino-US Investment and Management Consulting Ltd.**

Sino-US Investment and Management Consulting Ltd. (“Sino-US”) asserts an unsecured claim in the amount of \$5,941,715.49. *See* Claim No. 3-1 (“Claim 3”).

On June 28, 2013, the Debtor and Sino-US entered into an agreement, under which Sino-US would recruit Chinese investors to finance the development of the Property through the EB-5 program (the “Incentive Agreement”). Under the EB-5 program, foreign investors can obtain US permanent resident status if they invest a sufficient amount of money into an enterprise that creates jobs in the United States. The Incentive Agreement required the Debtor to pay commissions to Sino-US for its recruitment services.

To facilitate the execution of the Incentive Agreement, Hyun Rhee, the Debtor’s principal, formed The Gaju Forever, LLC (“Gaju Forever”). Gaju Forever was the

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entity that raised the funds ultimately earmarked for development of the Property. In EB-5 parlance, Gaju Forever was a “new commercial enterprise” or “NCE”; its purpose was to loan the funds raised from the Chinese investors to the Debtor, which was the “job creating entity” or “JCE.”

The Incentive Agreement provided:

[Gaju Forever] is seeking to raise US \$27 million ... from 54 investors ... who shall each pay US \$500,000 ... to [Gaju Forever] pursuant to [Gaju Forever’s] Confidential Private Placement Memorandum dated December 4, 2012.

Incentive Agreement [Doc. No. 412, Ex. 3] at p. 1.

Sino-US’s claim is based upon fees that Sino-US contends it is owed under the Incentive Agreement.

**C. Summary of Papers Filed in Connection with the Claim Objection**

The Liquidating Trustee objects to Claim 3 on two grounds. First, the Liquidating Trustee contends that under the Securities Exchange Act of 1934 (the “Exchange Act”), Sino-US was required to register as a broker-dealer with the Securities and Exchange Commission (the “SEC”) in connection with the solicitation of Chinese investors under the Incentive Agreement. Because Sino-US did not register as a broker-dealer with the SEC, the Liquidating Trustee maintains that the Incentive Agreement is void for illegality. The Liquidating Trustee further asserts that paying Sino-US fees under the Incentive Agreement could subject the Liquidating Trust to an SEC enforcement action and civil penalties for making disbursements on an illegal Incentive Agreement to an unregistered broker-dealer.

Second, the Liquidating Trustee argues that Sino-US violated the Exchange Act because the Private Placement Memorandum (the “PPM”) issued to investors solicited by Sino-US failed to disclose that Sino-US was entitled to a 30% commission to be paid from funds raised from those investors. This non-disclosure, the Liquidating Trustee asserts, constituted a “material omission” in violation of §§ 10(b) and 17(a)(2) of the Exchange Act and Rule 10b-5. According to the Liquidating Trustee, the alleged material non-disclosure is an additional reason why the Incentive Agreement is void and unenforceable.

Sino-US opposes the Claim Objection. With respect to the issue of registration, Sino-US argues that it was not required to register as a broker-dealer with the SEC because it is based in Hong Kong and it solicited only investors who were located in

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China. According to Sino-US, this means that its soliciting activities fell outside the jurisdiction of the SEC, exempting it from the registration requirement.

With respect to the issue of non-disclosure, Sino-US disputes as factually incorrect the Liquidating Trustee's contention that Sino-US was entitled to a 30% commission to be paid from funds raised from the Chinese investors it solicited. According to Sino-US, the fees owed it under the Incentive Agreement were payable by the Debtor out of its "other funds, because the EB-5 funds were specifically earmarked for construction and development." Opposition [Doc. No. 463] at p. 22. Sino-US further argues that the Debtor, as the beneficiary of Sino-US's services, lacks standing to assert that the PPM omitted material facts. Sino-US states that "no immigrant investor has ever appeared to complain about this issue." *Id.*

In its Reply to Sino-US's Opposition, the Liquidating Trustee contends that Sino-US's status as a foreign dealer does not necessarily mean that it falls outside of the SEC's jurisdiction. The Liquidating Trustee states that he "will be propounding discovery on ... Sino-US representatives ... as part of this proceeding ..." Reply [Doc. No. 473] at p. 13. The Liquidating Trustee disputes Sino-US's contention that its commissions were not payable from the funds raised from investors. The Liquidating Trustee notes that prior to the Petition Date, Sino-US's commissions were paid from the same account that held the investment proceeds.

## **II. Findings of Fact and Conclusions of Law**

### **A. The Incentive Agreement is Not Void Based Upon Sino-US's Failure to Register as a Broker Dealer**

The Exchange Act does not apply to persons or entities not transacting business in the United States:

The provisions of this title or of any rule or regulation thereunder shall not apply to any person insofar as he transacts a business in securities without the jurisdiction of the United States, unless he transacts such business in contravention of such rules and regulations as the Commission may prescribe as necessary or appropriate to prevent evasion of this title.

Exchange Act at ¶ 30(b) (codified at 15 U.S.C. § 78dd(b)).

Guidance issued by the Securities and Exchange Commission confirms that the broker-dealer registration requirements do not apply to a broker that, like Sino-US, is a foreign firm that sells securities exclusively to non-U.S. citizens who are located

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outside of the U.S.:

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The staff believes that, in contrast to the more expansive scope of the antifraud provisions, the U.S. broker-dealer registration requirements were not intended to protect foreign persons dealing with foreign securities professionals outside the United States. Rather, the primary responsibility for protecting foreign investors from wrongful conduct of foreign securities professionals properly lies with foreign securities regulators.

SEC Release 34-25801 (June 23, 1998).

Sino-US is based in Hong Kong. It solicited investors who are not U.S. citizens. There is no evidence before the Court establishing that the investors that Sino-US solicited were located within the U.S. at the time the solicitations took place. Therefore, Sino-US was not required to register as a broker-dealer with the SEC in connection with the solicitation of investors under the Incentive Agreement. Consequently, the Liquidating Trustee is not entitled to disallowance of Sino-US's claim on the ground that Sino-US failed to register as a broker-dealer.

**B. On the Present Record, the Court Cannot Determine Whether Claim 3 is Void Based on the PPM's Non-Disclosure of the Commissions**

Under Bankruptcy Rule 3001(f), a proof of claim executed and filed in accordance with the Bankruptcy Rules constitutes *prima facie* evidence of the validity and amount of the claim. To overcome the presumption of validity created by a timely-filed proof of claim, an objecting party must do one of the following: (1) object based on legal grounds and provide a memorandum of points and authorities setting forth the legal basis for the objection; or (2) object based on a factual ground and provide sufficient evidence (usually in the form of declarations under penalty of perjury) to create triable issues of fact. *Durkin v. Benedor Corp. (In re G.I. Indus., Inc.)*, 204 F.3d 1276, 1280 (9th Cir. BAP 2000); *United States v. Offord Finance, Inc. (In re Medina)*, 205 B.R. 216, 222 (9th Cir. BAP 1996); *Hemingway Transport, Inc. v. Kahn (In re Hemingway Transport, Inc.)*, 993 F.2d 915, 925 (1st Cir. 1993). Upon objection, a proof of claim provides "some evidence as to its validity and amount" and is "strong enough to carry over a mere formal objection without more." See *Lundell v. Anchor Constr. Spec., Inc.*, 223 F.3d 1035, 1039 (9th Cir. 2000) (citing *Wright v. Holm (In re Holm)*, 931 F.2d 620, 623 (9th Cir. 1991)). An objecting party bears the burden and must "show facts tending to defeat the claim by probative force equal to that of the allegations of

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the proofs of claim themselves." *Holm*, 931 F.2d at 623. When the objector has shown enough evidence to negate one or more facts in the proof of claim, the burden shifts back to the claimant to prove the validity of the claim by a preponderance of evidence. *See Lundell*, 223 F.3d at 1039 (citation omitted).

Sino-US has introduced sufficient evidence to establish the *prima facie* validity of its claim. Sino-US has produced the Incentive Agreement and related documents evidencing its entitlement to fees for the role it played in soliciting the EB-5 investments for the Property.

On the present record, the Court cannot determine whether the Incentive Agreement is void because the PPM failed to disclose the commissions payable to Sino-US. The evidence currently in the record is not sufficient to resolve the dispute between the Liquidating Trustee and Sino-US regarding whether Sino-US's commissions were payable from the funds raised from the Chinese investors. To resolve the dispute, the Court will set this aspect of the Claim Objection for trial. The following dates shall apply with respect to the trial:

- 1) The last day to disclose expert witnesses and expert witness reports is **11/30/2021**.
- 2) The last day to disclose rebuttal expert witnesses and rebuttal expert witness reports is **12/30/2021**.
- 3) The last date to complete discovery, including discovery pertaining to expert witnesses, is **1/18/2022**. All discovery motions must also have been heard by this date. (For contemplated hearings on discovery motions, it is counsel's responsibility to check the Judge's self-calendaring dates, posted on the Court's website. If the discovery cutoff date falls on a date when the court is closed or that is not available for self-calendaring, the deadline for hearings on discovery motions is the next closest previous date which is available for self-calendaring.)
- 4) The last day for dispositive motions to be heard is **1/18/2022**. (If the motion cutoff date is not available for self-calendaring, the deadline for dispositive motions to be heard is the next closest previous date which is available for self-calendaring.)
- 5) A Pretrial Conference is set for **2/8/2022 at 11:00 a.m.** By no later than fourteen days prior to the Pretrial Conference, the parties must submit a Joint Pretrial Stipulation via the Court's Lodged Order Upload (LOU) system. Submission via LOU allows the Court to edit the Joint Pretrial

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**450 S. Western, LLC, a California limited liability**

**Chapter 11**

Stipulation, if necessary. Parties should consult the Court Manual, section 4, for information about LOU.

- 6) In addition to the procedures set forth in Local Bankruptcy Rule 7016-1(b), the following procedures govern the conduct of the Pretrial Conference and the preparation of the Pretrial Stipulation:
  - a) By no later than thirty days prior to the Pretrial Conference, the parties must exchange copies of all exhibits which each party intends to introduce into evidence (other than exhibits to be used solely for impeachment or rebuttal).
  - b) When preparing the Pretrial Stipulation, all parties shall stipulate to the admissibility of exhibits whenever possible. In the event any party cannot stipulate to the admissibility of an exhibit, that party must file a Motion in Limine which clearly identifies each exhibit alleged to be inadmissible and/or prejudicial. The moving party must set the Motion in Limine for hearing at the same time as the Pretrial Conference; notice and service of the Motion shall be governed by LBR 9013-1. The Motion in Limine must contain a statement of the specific prejudice that will be suffered by the moving party if the Motion is not granted. The Motion must be supported by a memorandum of points and authorities containing citations to the applicable Federal Rules of Evidence, relevant caselaw, and other legal authority. Blanket or boilerplate evidentiary objections not accompanied by detailed supporting argument are prohibited, will be summarily overruled, and may subject the moving party to sanctions.
  - c) The failure of a party to file a Motion in Limine complying with the requirements of subparagraph (ii) shall be deemed a waiver of any objections to the admissibility of an exhibit.
  - d) Motions in Limine seeking to exclude testimony to be offered by any witness shall comply with the requirements set forth in subparagraph (ii), and shall be filed by the deadline specified in subparagraph (ii). The failure of a party to file a Motion in Limine shall be deemed a waiver of any objections to the admissibility of a witness's testimony.
- 7) Trial is set for the week of **2/28/2022**. The trial day commences at 9:00 a.m. The exact date of the trial will be set at the Pretrial Conference. Consult the Court's website for the Judge's requirements regarding exhibit binders and trial briefs.



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- 8) This matter shall be referred to the Mediation Panel. The Debtor shall lodge a completed "Request for Assignment to Mediation Program; [Proposed] Order Thereon" (*see* Amended General Order 95-01 available on the Court's website) within 15 days from the date of this hearing, and deliver a hard copy directly to chambers c/o the judge's law clerk Daniel Koontz. The manner in which the mediation is conducted—whether in-person or by videoconference—shall be at the discretion of the mediator.

**E. Pending the Adjudication of Claim 3, the Liquidating Trustee Shall Hold in Reserve the Amount Sino-US Would Be Entitled to Receive in the Event its Claim is Allowed**

In the alternative to his request for disallowance of the claim in its entirety, the Liquidating Trustee asks that the Court estimate Claim 3 at \$0 for distribution purposes.

Under § 502(c), the Court is empowered to estimate "any contingent or unliquidated claim" for purposes of distribution, if the fixing or liquidation of such claim "would unduly delay the administration of the case."

The Liquidating Trustee scheduled Claim 3 as "disputed" but did not schedule the claim as "contingent" or "unliquidated." Consequently, the Liquidating Trustee is precluded from now taking the position that Claim 3 is "contingent" and therefore subject to estimation. *See, e.g., Cusano v. Klein*, 264 F.3d 936, 946 (9th Cir. 2001) ("[T]he debtor has a duty to prepare schedules carefully, completely, and accurately.").

Even if estimation were available, as a practical matter, estimating the claim at \$0 as requested by the Liquidating Trustee would bar Sino-US from receiving any distribution in the event that Sino-US succeeds in establishing the validity of its claim. "[T]he principal consideration in estimating unliquidated claims must be an accommodation to the underlying purposes of the Bankruptcy Code." *In re N. Am. Health Care, Inc.*, 544 B.R. 684, 688 (Bankr. C.D. Cal. 2016) (internal citations omitted). Allowing the claims estimation procedure to effectively moot any possible recovery by Sino-US would not be consistent with the purposes of the Bankruptcy Code. Therefore, the Liquidating Trust's request that the claim be estimated at \$0 for distribution purposes is **DENIED**. The Liquidating Trust shall hold in reserve an amount sufficient to satisfy Sino-US's *pro rata* share of the Liquidating Trust's assets in the event its claim is allowed in the amount of \$5,941,715.49. Since under the Plan general unsecured creditors are projected to receive a distribution of between 15–30%, this does *not* mean that the Liquidating Trust is required to hold the entire

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\$5,941,715.49 in reserve. Instead, the Liquidating Trust is required to reserve only an amount sufficient to satisfy Sino-US's *pro rata* share of the Liquidating Trust's assets in the event its claim is allowed in the amount of \$5,941,715.49.

### **III. Conclusion**

Based upon the foregoing, to the extent the Liquidating Trustee seeks disallowance of Claim 3 based on Sino-US's failure to register as a broker-dealer, the Claim Objection is **DENIED**. To the extent the Liquidating Trustee seeks disallowance of Claim 3 based upon the non-disclosure of Sino-US's commissions, the present record is insufficient to adjudicate the Claim Objection, and the Court will set this aspect of the Claim Objection for trial.

The Court will prepare and enter appropriate orders.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Landon Foody or Daniel Koontz, the Judge's Law Clerks, at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

#### **Note 1**

The payments were as follows: (1) G 450 LLC was paid \$28,785,842; (2) Pontis Capital, LLC was paid \$5,102,515; (3) Five West Capital, LP was paid \$6,382,944; (4) Evergreen Capital Assets, LP was paid \$1,384,967; (5) New Creation Engineering and Builders, Inc. was paid \$551,311; and (6) the Los Angeles County Treasurer and Tax Collector was paid \$2,437,177.

<b>Party Information</b>
--------------------------

**Debtor(s):**

450 S. Western, LLC, a California

Represented By

Aram Ordubegian

Christopher K.S. Wong

M Douglas Flahaut

Amelia Puertas-Samara



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**450 S. Western, LLC, a California limited liabilit**  
Dylan J Yamamoto

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**2:20-10264 450 S. Western, LLC, a California limited liability**

**Chapter 11**

**#116.00** Hearing re [421] Objection to Claim # by Claimant Alice Kang dba King Donkatsu. in the amount of \$ 10,688.00

Docket 0

**Tentative Ruling:**

8/31/2021

**Note: Parties may appear at the hearing either in-person or by telephone. Parties electing to appear in-person shall comply with all requirements regarding social distancing, use of face masks, etc. which may be in effect at the time of the hearing. Parties electing to appear by telephone should contact CourtCall at 888-882-6878 no later than one hour before the hearing.**

For the reasons set forth below, the Liquidating Trustee's Omnibus Claim Objection is **GRANTED** in its entirety.

**Pleadings Filed and Reviewed:**

- 1) Omnibus Motion For an Order Confirming All Unsecured Claims Based on Security Deposit Have Been Satisfied and Memorandum of Points and Authorities and Declaration of Dylan J. Yamamoto and Richard J. Laski in Support Thereof: (1) "Alice Kang dba King Donkatsu;" (2) "CNP Gaju #1, Inc. and Dong Hun Yoo dba Hyunghoon Tendon;" (3) "CNP Gaju #2, Inc. and Dong Hun Yoo dba Seoul Pho;" (4) "DaDream, Inc. dba Bornga;" (5) "Dong Hyuk Lee dba Beut;" (6) Eden Beauty LLC dba Aritaum;" (7) "Gaju Nail;" (8) "Kreation Enterprise Corp. dba Etude W Salon;" (9) "Mealtop USA dba Meal Top;" (10) "PPS-Capital Inc. and Dong Hun Yoo dba Myungrang Hotdog;" (11) "Se Woon Park dba E Young Collection;" (12) "Walter Kim dba BMB Medical Group;" and (13) "Warren Wi Kim dba Ye Teahouse" (collectively the "Claimants") [Doc. Nos. 421-433] (the "Motion")
- 2) Notice of Objection to Claims Based on Security Deposit: : (1) "Alice Kang dba King Donkatsu;" (2) "CNP Gaju #1, Inc. and Dong Hun Yoo dba Hyunghoon Tendon;" (3) "CNP Gaju #2, Inc. and Dong Hun Yoo dba Seoul Pho;" (4) "DaDream, Inc. dba Bornga;" (5) "Dong Hyuk Lee dba Beut;" (6) Eden Beauty

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LLC dba Aritaum;" (7) "Gaju Nail;" (8) "Kreation Enterprise Corp. dba Etude W Salon;" (9) "Mealtop USA dba Meal Top;" (10) "PPS-Capital Inc. and Dong Hun Yoo dba Myungrang Hotdog;" (11) "Se Woon Park dba E Young Collection;" (12) "Walter Kim dba BMB Medical Group;" and (13) "Warren Wi Kim dba Ye Teahouse" [Doc. Nos. 388-400]

3) No opposition is on file

## **I. Facts and Summary of Pleadings**

450 S. Western LLC, a California Limited Liability Company (the "Debtor") was the owner and operator of a three-story, 80,046 sq. ft. shopping center consisting of twenty-eight (28) storefronts (the "Property"). On January 10, 2020 (the "Petition Date"), Debtor filed for Chapter 11 bankruptcy and on January 24, 2020, Debtor scheduled thirteen (13) non-priority, unsecured claims (the "Disputed Claim(s)") based on a security deposit. The security deposits for ten (10) of the Disputed Claims – in the total amount of \$90,921.30 – were applied to overdue rent for April and May 2020. On October 14, 2020, the Property sold at auction to Jake Sharp Capital (the "Buyer"). The security deposits for two of the Disputed Claims – in the total amount of \$42,848 – were transferred to the Buyer. The final Disputed Claim in the amount of \$30,851.30 – was waived in a settlement agreement approved by the Court on June 3, 2020.

450 S. Western LLC Liquidating Trust (the "Liquidating Trust"), as successor-in-interest of the Debtor, submits that the Disputed Claims should be disallowed because none of the creditors filed a proof of claim and the Disputed Claims cannot be proven to be *prima facie* valid by a preponderance of the evidence. Accordingly, the Liquidating Trustee states the Disputed Claims should be disallowed pursuant to § 502(b)(1) as they are "unenforceable against the debtor and property of the debtor, under any agreement or applicable law for a reason other than because such claim is contingent or unmatured." 11 U.S.C. § 502(b)(1). In addition, under Federal Rule of Bankruptcy Procedure 3007(d)(5), the Liquidating Trustee asserts that the Disputed Claims should be disallowed because "they have been satisfied or released during the case in accordance with the Code, applicable rules, or a court order." Fed. R. Bankr. P. 3007(d)(5).

## **II. Findings of Fact and Conclusions of Law**

### **A. The Motion is Granted Pursuant to § 502(b)(1)**

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Section 502 requires the Court to disallow a claim that "is unenforceable against the debtor and the property of the debtor, under any agreement or applicable law for a reason other than because such claim is contingent or unmatured." Upon commencement of the case, Rule 3003(b) of the Federal Rules of Bankruptcy Procedure instructs debtors to file a schedule of liabilities and equity security holders. Fed. R. Bankr. P. 3003(b). At the time of filing the claims were valid and enforceable against the estate. As a result of the events occurring subsequent to the Petition Date, the Debtor filed an objection to all thirteen Disputed Claims stating they were satisfied and therefore are disallowed pursuant to Rule 3007(d) of the Federal Rules of Bankruptcy Procedure. Fed. R. Bankr. P. 3007(d). For reasons set forth below, the Court finds the Disputed Claims to be satisfied and therefore disallowed.

**B. The Disputed Claims Based on Security Deposits Which Were Applied to Post-Petition Rent Are Disallowed**

The Court finds each of the following Claimant's Disputed Claims to be satisfied and therefore disallowed under the Code. Each of these ten Claimants were overdue on rent and their respective security deposits were applied to said overdue rent prior to the Property's sale at auction. The value of each security deposit was returned to each claimant through satisfaction of overdue rent, thereby satisfying the monetary obligation between the parties and rendering these Disputed Claims unenforceable under Section 502(b)(1). The following claims are disallowed for this reason:

- Claim of "Alice Kang dba King Donkatsu" in the amount of \$10,688.00
- Claim of "CNP Gaju #1, Inc. and Dong Hun Yoo dba Hyunghoon Tendon" in the amount of \$9,576.00
- Claim of "CNP Gaju #2, Inc. and Dong Hun Yoo dba Seoul Pho" in the amount of \$9,254.00
- Claim of "Dong Hyuk Lee dba Beut" in the amount of \$9,422.00
- Claim of "Eden Beauty LLC dba Aritaum" in the amount of \$6,215.00
- Claim of "Gaju Nail" in the amount of \$12,560.00
- Claim of "Mealtop USA dba Meal Top" in the amount of \$9,723.60
- Claim of "PPS-Capital Inc. and Dong Hun Yoo dba Myungrang Hotdog" in the amount of \$9,723.60

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**CONT... 450 S. Western, LLC, a California limited liability**

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- Claim of "Se Woon Park dba E Young Collection" in the amount of \$3,685.20
- Claim of "Walter Kim dba BMB Medical Group" in the amount of \$16,100.00

**C. The Disputed Claims Based on Security Deposits Which Were Transferred to Buyer Are Disallowed**

The Court finds each of the following Claimant's Disputed Claims to be satisfied and therefore disallowed under the Code. As of the October 14, 2020 sale of the Property, the Debtor held security deposits for the two Claimants listed below. At the time the Property was sold, the security deposits of these Claimants were transferred to the Property's new owner, the Buyer. This transfer of the security deposit from Debtor to Buyer satisfied these Disputed Claims by transferring ownership of the Claimant's funds to the Buyer, rendering these Disputed Claims unenforceable under Section 502(b)(1). The following claims are disallowed for this reason:

- Claim of "Kreation Enterprise Corp. dba Etude W Salon" in the amount of \$31,488.00
- Claim of "Warren Wi Kim dba Ye Teahouse" in the amount of \$11,360.00

**D. The Claim of DaDream, Inc. is Disallowed Because It Was Waived in a Settlement Agreement**

On June 3, 2020, Claimant DaDream, Inc. waived its claim related to its security deposit in a settlement agreement approved by the Court. This settlement agreement relinquishes any claim against the estate related to the security deposit and thus renders the Disputed Claim unenforceable under Section 502(b)(1).

**III. Conclusion**

Pursuant to Section 502(b)(1) and Fed. R. Bankr. P. 3007(d)(5), the Disputed Claims are satisfied, as they have been applied to overdue rent, transferred, or waived, and therefore disallowed in full. *See* Doc. No. 387 at 4–8. None of the Disputed Claims are enforceable against the estate, therefore the Liquidating Trust holds no obligation to the claimants of the Disputed Claims. In accordance with Section 502(b)(1) and Bankruptcy Rules 3003(b) and 3005(d)(5), the Liquidating Trustee's Omnibus Claim Objection is **GRANTED**. The Court finds the Disputed Claims to be satisfied

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and therefore disallowed under the Code. This ruling does not constitute a waiver of the Liquidating Trust's right to assert additional claims and objections regarding the Disputed Claims or related claimants.

Within seven days of the hearing, the Liquidating Trustee shall submit an order incorporating this tentative ruling by reference.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Landon Foody or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

<b>Party Information</b>
--------------------------

**Debtor(s):**

450 S. Western, LLC, a California

Represented By

Aram Ordubegian

Christopher K.S. Wong

M Douglas Flahaut

Amelia Puertas-Samara

Dylan J Yamamoto

**United States Bankruptcy Court  
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**2:20-10264 450 S. Western, LLC, a California limited liability**

**Chapter 11**

**#117.00** Hearing re [422] Objection to Claim # by Claimant CNP Gaju #1, Inc. and Dong Hun Yoo dba Hyunghoon Tendon. in the amount of \$ 9,576.00.

Docket 0

**Tentative Ruling:**

8/31/2021

See Cal. No. 116, above, incorporated in full by reference.

<b>Party Information</b>
--------------------------

**Debtor(s):**

450 S. Western, LLC, a California

Represented By

Aram Ordubegian

Christopher K.S. Wong

M Douglas Flahaut

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Dylan J Yamamoto

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**2:20-10264 450 S. Western, LLC, a California limited liabilit**

**Chapter 11**

**#118.00** Hearing re [423] Objection to Claim # by Claimant CNP Gaju #2, Inc. and Dong Hun Yoo dba Seoul Pho. in the amount of \$ 9,254.00

Docket 0

**Tentative Ruling:**

8/31/2021

See Cal. No. 116, above, incorporated in full by reference.

<b>Party Information</b>
--------------------------

**Debtor(s):**

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**2:20-10264 450 S. Western, LLC, a California limited liability**

**Chapter 11**

**#119.00** Hearing [424] Objection to Claim # by Claimant DaDream, Inc. dba Bornga. in the amount of \$ 30,851.30.

Docket 0

**Tentative Ruling:**

8/31/2021

See Cal. No. 116, above, incorporated in full by reference.

<b>Party Information</b>
--------------------------

**Debtor(s):**

450 S. Western, LLC, a California

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Aram Ordubegian

Christopher K.S. Wong

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**2:20-10264 450 S. Western, LLC, a California limited liabilit**

**Chapter 11**

**#120.00** Hearing re [425] Objection to Claim # by Claimant Dong Hyuk Lee dba Beut. in the amount of \$ 9,422.00

Docket 0

**Tentative Ruling:**

8/31/2021

See Cal. No. 116, above, incorporated in full by reference.

<b>Party Information</b>
--------------------------

**Debtor(s):**

450 S. Western, LLC, a California

Represented By

Aram Ordubegian

Christopher K.S. Wong

M Douglas Flahaut

Amelia Puertas-Samara

Dylan J Yamamoto

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**2:20-10264 450 S. Western, LLC, a California limited liability**

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**#121.00** Hearing [426] Objection to Claim # by Claimant Eden Beauty LLC dba Aritaum.  
in the amount of \$ 6,215.00.

Docket 0

**Tentative Ruling:**

8/31/2021

See Cal. No. 116, above, incorporated in full by reference.

<b>Party Information</b>
--------------------------

**Debtor(s):**

450 S. Western, LLC, a California

Represented By

Aram Ordubegian

Christopher K.S. Wong

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**2:20-10264 450 S. Western, LLC, a California limited liability**

**Chapter 11**

**#122.00** Hearing re[427] Objection to Claim # by Claimant Gaju Nail. in the amount of \$  
12,560.00

Docket 0

**Tentative Ruling:**

8/31/2021

See Cal. No. 116, above, incorporated in full by reference.

<b>Party Information</b>
--------------------------

**Debtor(s):**

450 S. Western, LLC, a California

Represented By

Aram Ordubegian

Christopher K.S. Wong

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**2:20-10264 450 S. Western, LLC, a California limited liabilit**

**Chapter 11**

**#123.00** Hearing re [428] Objection to Claim # by Claimant Kreation Enterprise Corp. dba Etude W Salon. in the amount of \$ 31,488.00 .

Docket 0

**Tentative Ruling:**

8/31/2021

See Cal. No. 116, above, incorporated in full by reference.

<b>Party Information</b>
--------------------------

**Debtor(s):**

450 S. Western, LLC, a California

Represented By

Aram Ordubegian

Christopher K.S. Wong

M Douglas Flahaut

Amelia Puertas-Samara

Dylan J Yamamoto

**United States Bankruptcy Court  
Central District of California  
Los Angeles  
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11:00 AM

**2:20-10264 450 S. Western, LLC, a California limited liability**

**Chapter 11**

**#124.00** Hearing re [429] Objection to Claim # by Claimant Mealtop USA dba Meal Top.  
in the amount of \$ 9,723.60.

Docket 0

**Tentative Ruling:**

8/31/2021

See Cal. No. 116, above, incorporated in full by reference.

<b>Party Information</b>
--------------------------

**Debtor(s):**

450 S. Western, LLC, a California

Represented By

Aram Ordubegian

Christopher K.S. Wong

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**2:20-10264 450 S. Western, LLC, a California limited liabilit**

**Chapter 11**

**#125.00** Hearing re [430] Objection to Claim # by Claimant PPS-Capital Inc. and Dong Hun Yoo dba Myungrang Hotdog

Docket 0

**Tentative Ruling:**

8/31/2021

See Cal. No. 116, above, incorporated in full by reference.

<b>Party Information</b>
--------------------------

**Debtor(s):**

450 S. Western, LLC, a California

Represented By

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Christopher K.S. Wong

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**United States Bankruptcy Court  
Central District of California  
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**2:20-10264 450 S. Western, LLC, a California limited liabilit**

**Chapter 11**

**#126.00** Hearing re [431] Objection to Claim # by Claimant Se Woon Park dba E Young  
Collection. in the amount of \$ 3,685.20

Docket 0

**Tentative Ruling:**

8/31/2021

See Cal. No. 116, above, incorporated in full by reference.

<b>Party Information</b>
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**Debtor(s):**

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Judge Ernest Robles, Presiding  
Courtroom 1568 Calendar**

**Wednesday, September 1, 2021**

**Hearing Room 1568**

11:00 AM

**2:20-10264 450 S. Western, LLC, a California limited liabilit**

**Chapter 11**

**#127.00** Hearing re [432] Objection to Claim # by Claimant Walter Kim dba BMB Medical Group. in the amount of \$ 16,100.00 .

Docket 0

**Tentative Ruling:**

8/31/2021

See Cal. No. 116, above, incorporated in full by reference.

<b>Party Information</b>
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**Debtor(s):**

450 S. Western, LLC, a California

Represented By

Aram Ordubegian

Christopher K.S. Wong

M Douglas Flahaut

Amelia Puertas-Samara

Dylan J Yamamoto

**United States Bankruptcy Court  
Central District of California  
Los Angeles  
Judge Ernest Robles, Presiding  
Courtroom 1568 Calendar**

**Wednesday, September 1, 2021**

**Hearing Room 1568**

11:00 AM

**2:20-10264 450 S. Western, LLC, a California limited liability**

**Chapter 11**

**#128.00** Hearing re re [433] Objection to Claim # by Claimant Warren Wi Kim dba Ye  
Teahouse. in the amount of \$ 11,360.00

Docket 0

**Tentative Ruling:**

8/31/2021

See Cal. No. 116, above, incorporated in full by reference.

<b>Party Information</b>
--------------------------

**Debtor(s):**

450 S. Western, LLC, a California

Represented By

Aram Ordubegian

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**United States Bankruptcy Court  
Central District of California  
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**Wednesday, September 1, 2021**

**Hearing Room 1568**

11:00 AM

**2:20-10264 450 S. Western, LLC, a California limited liabilit**

**Chapter 11**

**#129.00** Post confirmation status conference

fr. 4-20-21; 8-17-21

Docket 316

**\*\*\* VACATED \*\*\* REASON: CONTINUED 12-14-21 AT 10:00 AM**

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

450 S. Western, LLC, a California

Represented By

Aram Ordubegian

Christopher K.S. Wong

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